

WESTERN STATES CONTRACTING ALLIANCE

MASTER PRICE AGREEMENT

for

COMPUTER EQUIPMENT, SOFTWARE, PERIPHERALS AND RELATED SERVICES

HEWLETT PACKARD COMPANY

Number A63309

This Agreement is made and entered into by Hewlett Packard Company, 20555 SH 249, Houston, TX 77070-2698, ("Contractor") and the Department of Administration ("State") on behalf of the State of Minnesota, participating members of the National Association of State Procurement officials (NASPO), members of the Western States Contracting Alliance (WSCA) and other authorized Participating States and Participating Entities.

RECITALS

WHEREAS, the State has the need to purchase and the Contractor desire to sell; and,

WHEREAS, the State has the authority to offer contracts to CPV members of the State of Minnesota and to other states.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

INTENT AND PURPOSE

The intent and purpose of this Agreement is to establish a contractual relationship with equipment manufacturers to provide, warrant, and offer maintenance services on **ALL** products proposed in their response to the RFP issued by the State of Minnesota. The Contractor may use subcontractors to provide the warranty and/or maintenance services; however the Contractor will be responsible for working with the equipment manufacturer on behalf of the Purchasing Entity and for the timeliness and quality of all services provided. No type of Lease transactions are allowed through this Agreement.

The Agreement is **NOT** for the purchase of major, large hardware or hardware and software offerings. In general, individual units/configurations should not exceed \$50,000 each. It is the expressed intent of some of the Participating States to set this level at not to exceed \$25,000 each. This **IS NOT** a restriction on how many units/configurations can be purchased, but on the value of each individual unit/configuration. Individual Participating States and Participating Entities may set specific limits in a participating addendum, with the prior approval of the WSCA Directors.

Contractors may offer, but participating states and entities do not have to accept, limited professional services related **ONLY** to the equipment and configuration of the equipment purchased through the Agreement.

1. Definitions

"Announced Promotional Price" are prices offered nationally to specific categories of customers (Consumer, Business or government) for defined time periods under predefined terms and conditions.

"Contract" means an agreement for the procurement of items of tangible personal property or services.

"Contract Administrator" means an individual appointed by the State to administer this Agreement on behalf of the State of Minnesota, the participating NASPO and WSCA members, and other authorized purchasers.

"Contractor" shall mean successful Responder who enters into a binding Master Price Agreement. The Contractor is responsible for all sales, support, warranty, and maintenance services for the products included in this Agreement. The Contractor must manufacture or take direct, non-assignable, legal responsibility for the manufacture of the equipment and warranty thereof.

"Consumables" that are required for the operation of Equipment offered or supplied are included – printer cartridges, batteries, projector bulbs, etc. Consumables such as magnetic media, paper and generally available office supplies are excluded.

"CPV Member" is any governmental unit having independent policy making and appropriating authority, that is a member of Minnesota's Cooperative Purchasing Venture (CPV) program.

"CPV Program" The Cooperative Purchasing Venture (CPV) program, as established by Minn. Stat. § 16C.03, subd. 10, authorizes the Commissioner of Administration to "enter into a cooperative purchasing agreement for the provision of goods, services, and utilities with [governmental entities] ..., as described in section 471.59, subdivision 1." Based on this authority, the commissioner of Administration, through the Materials Management Division (MMD), enters into a joint powers agreement that designates MMD as the authorized purchasing agent for the governmental entity. It is not legal for governmental entities that are not members of the CPV program to purchase from a State contract. Vendors are free to respond to other solicitations with the same prices they offer under a contract, but that is not considered use of the "State contract price."

"Cumulative Volume Discount" means a contractual, cumulative, permanent volume discount based on dollars resulting from the cumulative purchases by all governmental purchasers for the duration of their Master Price Agreement.

"Documentation" refers to manuals, handbooks, and other publications listed in the PSS, or supplied with products listed in the PSS, or supplied in connection with services. Documentation may be provided on magnetic media or may be downloaded from the Contractor's web site.

"E-Rate" is a program sponsored by the Federal Communications Commission whereby educational and other qualifying institutions may purchase authorized technology at reduced prices.

"Educational Discount Price" means the price offered in a nationally announced promotion, which is limited to educational customers only, as defined by the Contractor.

"Energy Star®" is a voluntary energy efficiency program sponsored by the U.S. Environmental Protection Agency. The Energy Star program makes identification of energy efficient computers easy by labeling products that deliver the same or better performance as comparable models while using less energy and saving money. Energy Star qualified computers and monitors automatically power down to 15 watts or less when not in use and may actually last longer than conventional products because they spend a large portion of time in a low-power sleep mode. For additional information on the Energy Star program, including product specifications and a list of qualifying products, visit the Energy Star website at <http://www.energystar.gov>.

"Equipment" means workstations, desktop, laptop (includes Tablet PC's), and handheld (PDA) devices, servers, computing hardware, including upgrade components such as memory, storage drives, and spare parts.

"FCC" means the Federal Communications Commission or successor federal agency. In the event of deregulation, this term applies to one or more state regulatory agencies or other governing bodies charged to perform the same, or similar, role.

"General Price Reduction Price" means the price offered to consumer, business or governmental purchaser at prices lower than PSS pricing. General price reduction prices will be reflected in the PSS as soon as practical.

"ISO 14001" is the conformance standard within the family of ISO 14000 documents developed by the International Organization for Standardization (ISO) in Geneva, Switzerland. Similar in structure to the ISO 9000 quality management system standard, ISO 14001 outlines key requirements companies should comply with in order to operate in an environmentally responsible manner. Utilizing ISO 14001, companies can merge environmental programs into one coherent system to efficiently manage all environmental activities. In short, ISO 14001 provides organizations with a way to demonstrate to their customers that their environmental processes and impact are effectively managed, continually improving, and part of the corporate management system. For more information, please refer to www.iso.org.

"Lead State" means the State conducting this cooperative solicitation and centrally administering any resulting Master Price Agreement(s). For this solicitation, the Lead State is Minnesota.

"Mandatory" The terms "must" and "shall" identify a mandatory item or factor.

"Manufacturer" means the company that designs, assembles, and markets computer equipment including workstations, desktop computers, laptop (includes Tablet PC's) computers, handheld (PDA) devices, servers, printers, and storage solutions/auxiliary storage devices. The manufacturer's name(s) shall appear on the computer equipment. The Contractor shall provide warranty service and maintenance for equipment covered by this Agreement as well as a Takeback Program.

"Master Price Agreement" means the contract that MMD will approve that contains the foundation terms and conditions for the acquisition of Contractor's products and/or services by Purchasing Entities. The "master price agreement" is a permissive price agreement. In order for a Purchasing Entity to participate in a Master Price Agreement, the appropriate state procurement official or other designated procurement official must be a Participating State or Participating Entity.

"Materials Management Division" or "MMD" means the procurement official for the State of Minnesota or a designated representative.

"NASPO" means the National Association of State Procurement Officials

"Participating Addendum" means a bilateral agreement executed by the Contractor and a Participating State or political subdivision of a State that clarifies the operation of the price agreement for the State or political subdivision concerned, e.g. ordering procedures specific to a State or political subdivision and other specific language or other requirements. Terms and conditions contained in a Participating Addendum shall take precedence over the corresponding terms in the master price agreement. Additional terms and conditions may be added via the Participating Addendum. However, a Participating Addendum may not alter the scope of this Agreement or any other Participating Addendum. ***Unless otherwise specified, the Participating Addendum shall renew consecutively with the Master Price Agreement.*** One physically or digitally signed copy of each Participating Addendum shall be filed by the Contractor with the Contract Administrator within five (5) days after execution.

"Participating State" or "Participating Entity" means a member of NASPO (Participating State) or a political subdivision of a NASPO member (Participating Entity) who has indicated its intent to participate by signing an Intent to Participate, or who subsequently signs a Participating Addendum where required, or another state or political subdivision of another state authorized by the WSCA Directors to be a party to the resulting Master Price Agreement through the execution of a participating addendum.

"PDA" means a Personal Digital Assistant. Refers to a wide variety of handheld and palm-size PCs, and electronic organizers. PDA's usually can store phone numbers, appointments, and to-do lists. PDA's can have a small keyboard, and/or have only a special pen that is used for input and output. The PDA can also have a wireless fax modem. Files can be created on a PDA which are later entered into a larger computer. **NOTE: For this Agreement, all Tablet PC's are NOT considered PDA's.**

"Peripherals" include but are not limited to storage, printers (including multifunction network print/fax/scanner/copying devices), scanners, monitors, keyboards, cameras (digital and video used in conjunction with computing equipment), projectors, uninterruptible power supplies and accessories. Adaptive/Assistive technology devices are included as well as configurations for education. Peripherals may be manufactured by a third party, however, Contractor shall not offer any peripherals manufactured by another contractor holding a Master Price Agreement without the prior approval of the Contract Administrator.

"Per Transaction Multiple Unit Discount" means a contractual volume discount based on dollars in a single purchase order or combination of purchase orders submitted at one time by a Purchasing Entity or multiple entities conducting a cooperative purchase.

"Political Subdivision" means local public governmental subdivisions of a state, as defined by that state's statutes, including instrumentalities and institutions thereof. Political subdivisions include cities, counties, courts, public schools and institutions of higher education.

"Price Agreement" means an indefinite quantity contract that requires the Contractor to furnish products or services to a Purchasing Entity that issues a valid Purchase Order.

"Procurement Manager" means the person or designee authorized by MMD to manage the relationships with WSCA, NASPO, and Participating States/Participating Entities.

"Product(s)" means personal computer equipment, peripherals, LAN hardware Software, and Network Storage devices, but not unrelated services.

"Products and Services Schedule Prices" mean the maximum prices offered to Participating Entities exclusive of Announced Promotional Prices, Education Discount Prices, General Price Reductions, or Large Order Negotiated Prices. All such products and services shall be listed on the Contractor's web site accessible via a URL.

"Purchase Order" means an electronic or paper document issued by the Purchasing Entity that directs the Contractor to deliver Products or Services pursuant to a Price Agreement.

"Purchasing Entity" means a Participating State or another legal entity, such as a political subdivision, properly authorized by a Participating State to enter into a Agreement for the purchase of goods described in this solicitation. Unless otherwise limited by statute, in this solicitation or in a Participating Addendum, political subdivisions of Participating States are Purchasing Entities and authorized to purchase the goods and/or services described in this solicitation.

"Services" are broadly classed as installation/de-installation, maintenance, support, training, migration, and optimization of products offered or supplied under the Master Price Agreement. These types of services may include, but are not limited to: warranty services, maintenance, installation, de-installation, factory integration (software or equipment components), asset management, recycling/disposal, training and certification, pre-implementation design, disaster recovery planning and support, service desk/help desk, and any other directly related technical support service required for the effective operation of a product offered or supplied. General consulting and all forms of application development and programming services are excluded.

"Servicing Subcontractor" or **"Reseller Agent"** or **"Subcontractor"** means a Contractor authorized and state-approved subcontractor who may provide local marketing support or other authorized services on behalf of the Contractor in accordance with the terms and conditions of the Contractor's Master Price Agreement. A wholly owned subsidiary or other company providing warranty or other technical support services qualifies as a Servicing Subcontractor. Local business partners may qualify as Servicing Subcontractors. Servicing Subcontractors may not directly accept Purchase Orders or payments for Products or Services from Purchasing Entities, unless otherwise provided in a Participating Agreement. Servicing Subcontractors shall be named individually or by class in the Participating Addendum. The Contractor actually holding the Master Price Agreement shall be responsible for Servicing Subcontractor's providing warranty service and maintenance for equipment on a Master Price Agreement as well as the Take back Program.

"Standard Configurations" mean deeply discounted standard configurations that are available to Purchasing Entities using the Master Price Agreement only. This specification includes a commitment to maintain and upgrade (keep pace with the advance of technology) the standard configurations for a stated period of time or intervals.

"State Procurement Official" means the director of the central purchasing authority of a state.

"Storage Solution/Auxiliary Storage" means the technology and equipment used for storage of large amounts of data or information. This includes technologies such as: Network Attached Storage (NAS); Storage Area Networks (SAN); Content Addressed Storage (CAS); and/or Clustered Network Storage (CNS).

"Takeback Program" means the Contractor's process for accepting the return of the equipment or other products at the end of life.

"Trade In" refers to the exchange of used Equipment for new Equipment at a price reduced by the value of the used Equipment.

"Travel" means expenses incurred by authorized personnel directly related to the performance of a Service. All such expenses shall be documented in a firm quotation for the Purchasing Entity prior to the issuance and acceptance of a Purchase Order. Travel expenses will be reimbursed in accordance with the purchasing entities allowances, if any, as outlined in the PA.

"Universal Resource Locator" or **"URL"** means a standardized addressing scheme for accessing hypertext documents and other services using the WWW browser.

"WSCA" means the Western States Contracting Alliance, a cooperative group contracting consortium for state procurement officials, representing departments, institutions, agencies, and political subdivisions (i.e., colleges, school districts, counties, cities, etc.) for the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Minnesota, Montana, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington, and Wyoming.

2. **Scope of Work**

The Contractor, or its approved subcontractor, shall accept purchase orders from and deliver computing system Products and services to Purchasing Entities in accordance with the terms of this Agreement. This Agreement is a "Master Price Agreement". Accordingly, the Contractor shall provide Products or Services only upon the issuance and acceptance by the Contractor of valid "Purchase Orders". Purchase Orders may be issued to purchase the license for software or to purchase products listed on the Contractor's PSS. A Purchasing Entity may purchase any quantity of Product or Service listed in the Contractor's PSS at the prices in accordance the Paragraph 13, Price Guarantees. Subcontractor participation is governed by the individual Participating State procurement official. The Contractor is required to provide warranty and maintenance services on equipment that is purchased. The Contractor shall offer a Takeback Program for all products covered by this Agreement.

3. **Title Passage**

The Contractor must pass unencumbered title to any and all products purchased under this Agreement upon receipt of the product by the Purchasing Entity. This obligation on the part of the Contractor to transfer all ownership rights does not apply to proprietary materials owned or licensed by the Contractor or its subsidiaries, subcontractors or licensor, or to unmodified commercial software that is available to the State on the open market. Ownership rights to such materials shall not be affected in any manner by this Agreement.

4. **Permissive Price Agreement and Quantity Guarantee**

This Agreement is not an exclusive agreement. Purchasing Entities may obtain computing system Products and services from other sources during the agreement term. The State of Minnesota, NASPO and WSCA make no express or implied warranties whatsoever that any particular number of Purchase Orders will be issued or that any particular quantity or dollar amount of Products or Services will be procured.

5. **Order of Precedence**

Each Purchase Order that is accepted by the Contractor shall become a part of the Agreement as to the Products and Services listed on the Purchase Order only; no additional terms or conditions conflicting with this Agreement or the Participating Addendum will be added to this Agreement as the result of acceptance of a Purchase Order. The Contractor agrees to accept all valid Purchase Orders. In the event of any conflict among these documents, the following order of precedence shall apply:

- A. Executed Participating Addendum(s);
- B. Terms and conditions of this Agreement;
- C. Exhibits and amendments to this Agreement;
- D. The list of products and services contained in the purchase order;
- E. The request for proposals document P-1331 and Addenda thereto; and
- F. Contractor's proposal including any written clarifications and/or best and final offer.

6. **Payment Provisions**

All payments under this Agreement are subject to the following provisions:

A. **Acceptance**

A Purchasing Entity shall determine whether all Products and Services delivered meet the Contractor's published specifications. No payment shall be made for any Products or Services until the Purchasing Entity has accepted the Products or Services. The Purchasing Entity will make every effort to notify the Contractor within thirty (30) calendar days following delivery of non-acceptance of a product or service. In the event that the Contractor has not been notified within 30 days from delivery of product or completion of service, the product and/or service will be deemed accepted on the 31st day after delivery of product or completion of service.

B. **Payment of Invoice**

- 1. Payments shall be submitted to the Contractor at the address shown on the invoice, as long as the Contractor has exercised due diligence in notifying the State of Minnesota and/or the Purchasing Entity of any changes to that address. Payments shall be made in accordance with the applicable laws of the Purchasing Entity.

2. For Minnesota, per Minn. Stat. § 16A.124, payment shall be made to the Contractor within thirty (30) days following receipt of an undisputed invoice, merchandise or service whichever is later. After the thirtieth day, interest may be paid on the unpaid balance due to the Contractor at the rate of one and one-half percent per month. The Purchasing Entity shall make a good-faith effort to pay within thirty (30) days on all undisputed invoices. Payments may be made via a Purchasing Entity's "Purchasing Card".
3. In the event an order is shipped incomplete (partial), the Purchasing Entity shall pay for each shipment as invoiced by the Contractor unless the Purchasing Entity has clearly specified "No Partial Shipments" on each Purchase Order.

C. Payment of Taxes

Payment of taxes for any money received under this agreement shall be the Contractor's sole responsibility and shall be reported under the Contractor's federal and state tax identification numbers. If a Purchasing Entity is not exempt from sales, gross receipts, or local option taxes for the transaction, the Contractor shall be reimbursed by the Purchasing Entity to the extent of any tax liability assessed.

The State of Minnesota State agencies are subject to paying Minnesota sales and use taxes. Taxes for State agencies will be paid directly to the Department of Revenue using Direct Pay Permit #1114.

D. Invoices

Invoices shall be submitted to the Purchasing Entity at the address shown on the Purchase Order. Contractor shall provide a commercial invoice. The Contractor shall also provide a packing slip/list for each system to identify the components included within the configuration. Invoices shall match the line items on the Purchase Order.

7. Agreement Term

Pursuant to Minnesota law, the term of this Agreement shall be effective upon the date of final execution by the State of Minnesota or on September 1, 2004, whichever is later, through August 31, 2007 (3 years). The Agreement may be mutually renewed for two (2) additional one-year terms unless terminated pursuant to the terms of this Agreement.

8. Termination

The following provisions are applicable in the event that the agreement is terminated.

A. Termination for Convenience

At any time, the State may terminate this agreement, in whole or in part, by giving the Contractor (30) days written notice; provided, however, neither the State nor a Purchasing Entity has the right to terminate a specific purchase order for convenience after it has been issued if the product is ultimately accepted. At any time, the Contractor may terminate this Agreement, in whole or in part, by giving the Contract Administrator sixty (60) days written notice. Such termination shall not relieve the Contractor of warranty or other Service obligations incurred under the terms of this Agreement. In the event of a cancellation, the Contractor shall be entitled to payment, determined on a pro rata basis, for work or services satisfactorily performed and accepted.

B. Termination for Cause

Either party may terminate this Agreement for cause based upon material breach of this Agreement by the other party, provided that the non-breaching party shall give the breaching party written notice specifying the breach and shall afford the breaching party a reasonable opportunity to correct the breach. If within thirty (30) days after receipt of a written notice the breaching party has not corrected the breach or, in the case of a breach that cannot be corrected in thirty (30) days, begun and proceeded in good faith to correct the breach, the non-breaching party may declare the breaching party in default and terminate the Agreement effective immediately. The non-breaching party shall retain any and all other remedies available to it under the law.

C. A Purchasing Entity's Rights

In the event this Agreement expires or is terminated for any reason, a Purchasing Entity shall retain its rights in all Products and services accepted prior to the effective termination date.

D. The Contractor's Rights

In the event this Agreement expires or is terminated for any reason, a Purchasing Entity shall pay the Contractor all amounts due for Products and services ordered and accepted prior to the effective termination date or ordered before the effective termination date and ultimately accepted.

9. Non-Appropriation

The terms of this Agreement and any purchase order issued for multiple years under this Agreement is contingent upon sufficient appropriations being made by the Legislature or other appropriate governing entity. Notwithstanding any language to the contrary in this Agreement or in any purchase order or other document, a Purchasing Entity may terminate its obligations under this Agreement, if sufficient appropriations are not made by the governing entity at a level sufficient to allow for payment of the goods or services due for multiple year agreements, or if operations of the paying entity are being discontinued. The Purchasing Entity's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final and binding.

A Purchasing Entity shall provide sixty (60) days notice, if possible, of its intent to terminate for reason cited above. Such termination shall relieve the Purchasing Entity, its officers and employees from any responsibility or liability for the payment of any further amounts under the relevant Purchase Order.

10. Shipment and Risk of Loss

- A. All deliveries shall be F.O.B. destination, prepaid and allowed, with all transportation and handling charges included in the price of the product and paid by the Contractor. Responsibility and liability for loss or damage shall remain with the Contractor until delivery to the identified ship to address when responsibility and liability for loss shall pass to the Purchasing Entity except as to latent defects, fraud and Contractor's warranty obligations.
- B. Whenever a Purchasing Entity does not accept Products and returns them to the Contractor, all related documentation furnished by the Contractor shall be returned also. Unless otherwise agreed upon by the Purchasing Entity, the Contractor is responsible for the pick-up of returned Products. The Contractor shall bear all risk of loss or damage with respect to returned Products except for loss or damage directly attributable to the negligence or wrongful intentional act or omission of the Purchasing Entity.
- C. Unless otherwise arranged between the Purchasing Entity and Contractor, all shipments of Products should be shipped within three-to-five days by a reliable and insured shipping company.

11. Warranties

- A. The Contractor agrees to warrant and assume responsibility for each Product that it licenses or sells to the Purchasing Entity under this Agreement in accordance with the Contractor's standard warranties. The Contractor acknowledges that the Uniform Commercial Code applies to this Agreement covering Warranty. In general, the Contractor warrants that:
 - 1. The Product will conform with the specific technical information about the Contractor's products which is published in the Contractor's product manuals or data sheets.
 - 2. The Product will be suitable for the ordinary purposes for which such Product is intended,
 - 3. The Product will meet any mandatory specifications provided in writing to the Contractor prior to reliance by the Participating Entity on the Contractor's skill or judgment when it advised the Purchasing Entity about the Product's ability to meet those mandatory specifications.
 - 4. The Product has been properly designed and manufactured for its intended use, and
 - 5. The Product is free of significant defects in material and workmanship.

6. Exhibit A contains additional warranties in effect as of the date of this Agreement. The warranties will be limited in duration to the time period(s) provided in Exhibit A. The warranties will not apply to use of a Product other than as anticipated and intended by the Contractor, to a problem arising after changes or modifications to the Products or operating system by any party other than the Contractor (unless expressly authorized in writing by the Contractor), or to use of a Product in conjunction or combination with other products or software not authorized by the Contractor. The following is a list of the warranties attached as **Exhibit A**:

- a) HP global limited warranty statement for NonStop products which can be found on the Contractor's website at:
<http://H71033.www7.hp.com/page/WARRANTY.html>. This warranty is for Unix Products.
- b) HP All other product Hardware Limited warranty can be found on the Contractor's website at:
<http://h20000.www2.hp.com/bizsupport/TechSupport/ProductRoot.jsp?>

- B. Contractor may modify the warranties described in Exhibit A from time to time with 30 days prior written approval of the Contract Administrator.
- C. Warranty documents for Products manufactured by a third party shall be delivered to the Purchasing Entity with the Products, as provided by the Manufacturer.

12. Patent, Copyright, Trademark and Trade Secret Indemnification

- A. The Contractor shall defend, at its own expense, the State of Minnesota, Participating States, Participating Entities, Purchasing Entities against any claim that any Product or Service provided under this Agreement infringes any patent, copyright or trademark in the United States or Puerto Rico, and shall pay all costs, damages and attorneys' fees that a court finally awards as a result of any such claim. In addition, if any third party obtains a judgment against a Purchasing Entity based upon the Contractor's trade secret infringement relating to any Product or Service provided under this Agreement, the Contractor agrees to reimburse the Purchasing Entity for all costs, attorneys' fees and the amount of the judgment. To qualify for such defense and/or payment, the Lead State or Participating or Purchasing Entity shall:
1. Give the Contractor prompt written notice of any claim;
 2. Allow the Contractor to control the defense or settlement of the claim; and
 3. Cooperate with the Contractor in a reasonable way to facilitate the defense or settlement of the claim.
- B. If any Products or Service becomes, or in the Contractor's opinion is likely to become the subject of a claim of infringement, the Contractor shall at its option and expense:
1. Provide a Purchasing Entity the right to continue using the Products or Services;
 2. Replace or modify the Products or Services so that it becomes non-infringing; or
 3. Accept the return of the Products or Service and refund an amount equal to the depreciated value of the returned Products or Service, less the unpaid portion of the purchase price and any other amounts, which are due to the Contractor. The Contractor's obligation will be void as to any Products or Services modified by the Purchasing Entity to the extent such modification is the cause of the claim.
- C. The Contractor has no obligation for any claim of infringement arising from:
1. The Contractor's compliance with the Purchasing Entity's or by a third party on the Purchasing Entity's behalf designs, specifications, or instructions;
 2. The Contractor's use of technical information or technology provided by the Purchasing Entity;
 3. Product modifications by the Purchasing Entity or a third party;
 4. Product use prohibited by Specifications or related application notes; or
 5. Product use with products that are not the Contractor branded.

13. Price Guarantees

The Purchasing Entities shall pay the lower of the prices contained in the PSS or an Announced Promotion Price, Educational Discount Price, General Price Reduction price, Trade-In price, Per Transaction Multiple Unit Discount Price, or Standard Configuration Price. Only the General Price Reduction price decreases will apply to all subsequent Purchase Orders accepted by Contractor after the date of the issuance of the General Price Reduction prices.

The initial Cumulative, Per Transaction Multiple Unit, and Standard Configurations Discounts shall be submitted to the Contract Administrator in a format agreeable to both parties prior to signing the Agreement. Once a cumulative volume has been reached, the increased price discount will apply to all future orders, until the next level of cumulative volume is reached.

14. Product and Service Schedule

The Contractor agrees to maintain the PSS in accordance with the following provisions:

- A. The PSS prices for Products and services will conform to the guaranteed price discount levels on file with the Contract Administrator for the following Products:
 - Band 1: File/Print Servers, Mid-Range Servers
 - Band 2: Desktops, Laptops, Tablet PCs,
 - Band 3: Printers, High speed; Medium speed; Desktop; Laptop
 - Band 4: Storage Solutions
 - Band 5: PDA's
 - LAN equipment and related software.
 - General Purpose Software
- B. The Contractor may change the price of any Product or Service at any time, based upon documented baseline price changes, but the guaranteed price discount levels shall remain unchanged during the agreed period unless or until prior approval is obtained from the Contract Administrator. The Contractor agrees that the PSS on the State's administration website shall contain a single, uniform WSCA price for configurations and items. Failure to comply with this requirements will be grounds for further action to be taken against the Contractor.
- C. The Contractor may make model changes; add new Products, and Product upgrades or Services to the PSS in accordance with Item 15. Product Substitutions, below. The pricing for these changes shall incorporate, to the extent possible, comparable price discount levels approved by the Contract Administrator for similar Products or Services.
- D. The Contractor agrees to delete obsolete and discontinued Products from the PSS on a timely basis.
- E. The Contractor shall maintain the PSS on a Contractor supplied Internet web site.

15. Product Substitutions

A. Substitution of units/configurations

MMD and the WSCA Directors acknowledge that individual units and configurations may stop being produced during the life of the resulting Agreements. Substitution of different units and configurations will be permitted with the prior written approval of the Contract Administrator. This substitution is at the sole discretion of the Contract Administrator, subject only to review and approval of the Contract Administrator.

B. Addition of units/configurations

MMD and the WSCA Directors acknowledge that with the evolution of technology, new, emerging units and configurations will develop. Addition of these new, emerging units to the PSS may be permitted, with the prior approval of the Contract Administrator and the WSCA Directors. The addition of new, emerging units and configurations is at the sole discretion of the Contract Administrator, subject only to review and approval of the WSCA Directors.

16. Technical Support

The Contractor agrees to maintain a toll-free technical support telephone line. The line shall be accessible to Purchasing Entity personnel who wish to obtain competent technical assistance regarding the hardware and software installation or operation of Contractor-supplied Products during the product warranty period or during a support agreement.

17. Take back/Environment/Energy Efficiency Programs

The Contractor agrees to maintain for the term of this Agreement, and all renewals/extensions thereof, programs as described in their response to the RFP, including but not limited to:

- A. Take back/Recycling of CPUs, servers, monitors, flat panel displays, notebook computers, and printers. Costs are listed on the web site.
- B. Environment: Compliance with the European Unions' Directives, or other international directives; reduction/minimization/avoidance of the use of toxic and hazardous constituents; certification by independent third party eco-labeling programs (TCO, Blue Angel, and Nordic Swan); ISO 14001 certification; and the use of recyclable, nontoxic packaging.
- C. Energy Efficiency: Products meet the Energy Star or other recognized programs for energy efficiency.
- D. Product labeling of compliance with Items B & C above, as well as identification of such information on the web site.

The Contractor will notify the Contract Administrator, in writing, of any additions/changes/deletions to the above programs.

18. Product Delivery

Contractor agrees to make reasonable efforts to deliver Products to Purchasing Entities within 20 business days or less after receipt of a valid Purchase Order, or in accordance with the schedule in the Purchasing Entity's Purchase Order where the timeframe for required delivery is greater than 20 business days or as otherwise mutually agreed to by the Purchasing Entity and Contractor.

19. Force Majeure

Neither party hereto shall be considered in default in the performance of its obligations hereunder to the extent that performance of any such obligations is prevented or delayed by acts of God, war, strike, riot, industry-wide constraints, or other catastrophes beyond the reasonable control of the party unless the act or occurrence could have been reasonably foreseen and reasonable action could have been taken to prevent the delay or failure to perform. A party defaulting under this provision must provide the other party prompt written notice of the default and take all necessary steps to bring about performance as soon as practicable.

20. Records and Audit

Per Minn. Stat. § 16C.05, Subd. 5, the books, records, documents, and accounting procedures and practices of the Contractor and its employees, agents, or subcontractors relevant to the Minnesota transactions must be made available and subject to examination by the contracting agency or its agents, the Legislative Auditor and/or the State Auditor for a minimum of six years after the end of the Contract or transaction.

Unless otherwise required by other than Minnesota Purchasing Entity governing law, such records relevant to other Purchasing Entity transactions shall be subject to examination by appropriate government authorities for a period of three years from the date of acceptance of the Purchase Order.

21. Independent Contractor

The Contractor and its agents and employees are independent contractors and are not employees of the State of Minnesota or of any participating entity. The Contractor has no authorization, express or implied to bind the Lead State, NASPO, WSCA or any Participating Entity to any agreements, settlements, liability or understanding with other third parties whatsoever, and agrees not to perform any acts as agent for the Lead State, NASPO, WSCA, or Participating Entity, except as expressly set forth herein. The Contractor and its agents and employees shall not accrue leave, retirement,

insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the Lead State or Participating Entity as a result of this Agreement.

22. Use of Servicing Subcontractors

The Contractor may subcontract services and purchase order fulfillment and/or support in accordance with the following paragraphs. However, the Contractor shall remain solely responsible for the performance of this Agreement.

- A. Reseller/Agent, Service Provider or Servicing Subcontractors shall be identified individually or by class in the applicable Participating Addendum, or as noted in the Participating Addendum on the Purchasing Entities extranet site. The ordering and payment process for Products or Services shall be defined in the Participating Addendum.

23. Payments to Subcontractors

In the event the Contractor hires subcontractors to perform all or some of the duties of this Agreement, the Contractor understands that Minn. Stat. § 16A.1245 requires that any such subcontractor be paid within ten (10) days of the Contractor's receipt of payment from the State for undisputed services provided by the subcontractor. The Contractor agrees to take all steps necessary to comply with said statute. A consultant is a subcontractor under this Agreement. In the event the Contractor fails to make timely payments to a subcontractor, the State may, at its sole option and discretion, pay a subcontractor any amounts due from the Contractor for work performed under this Agreement and deduct said payment from any remaining amounts due the Contractor. Before any such payment is made to a subcontractor, the State shall provide the Contractor written notice that payment will be made directly to a subcontractor. The Contractor shall ensure that the subcontractor transfers all intellectual or industrial property rights, including but not limited to any copyright it may have in the work performed under this Agreement, consistent with the intellectual property rights and ownership sections of this Agreement. In the event the Contractor does not obtain the intellectual property rights of the subcontractor consistent with the transfer of rights under this Agreement, the State may acquire such rights directly from the subcontractor. Any and all costs associated with such a direct transfer may be deducted from any amount due the Contractor.

24. Indemnification

The Contractor shall hold the Lead State, Participating Entities and its agencies and employees harmless and shall indemnify the Lead State, Participating Entities and its agencies and employees against any and all claims, suits, actions, liabilities and costs of any kind, including attorney's fees for personal injury or damage to real property or tangible personal property arising from the negligent or willful acts or omissions of the contractor, its agents, officers, employees or subcontractors. Contractor shall not be liable for damages that are the result of negligence by the Lead State, Participating Entity, or its employees.

25. Amendments

Agreement amendments shall be negotiated by the State with the Contractor whenever necessary to address changes in the terms and conditions, costs, timetable, or increased or decreased scope of work. This Agreement shall be amended only by written instrument executed by the parties. An approved Agreement amendment means one approved by the authorized signatories of the Contractor and the State as required by law.

26. Scope of Agreement

This Agreement incorporates all of the agreements of the parties concerning the subject matter of this Agreement. No prior agreements, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

27. Severability

If any provision of this Agreement, including items incorporated by reference, is found to be illegal, unenforceable, or void, by a court of competent jurisdiction then both the State and the Contractor shall be relieved of all obligations arising under such provision. If the remainder of this Agreement is legally valid, it shall not be affected by such declaration or finding and shall be fully performed.

28. Enforcement of Agreement/Waivers

- A. No covenant, condition, duty, obligation, or undertaking contained in or made a part of this Agreement shall be waived except by the written consent of the parties. Forbearance or indulgence in any form or manner by either party in any regard whatsoever shall not constitute a waiver of the covenant, condition, duty, obligation, or undertaking to be kept, performed, or discharged by the other party. Until complete performance or satisfaction of all such covenants, conditions, duties, obligations, and undertakings, the forbearing/indulging party shall have the right to invoke any remedy available under law or equity, notwithstanding any such forbearance or indulgence.
- B. Waiver of any breach of any provision of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Agreement shall be held to be waived, modified, or deleted except by an instrument, in writing, signed by the parties hereto.
- C. Neither party's failure to exercise any of its rights under this Agreement will constitute or be deemed a waiver or forfeiture of those rights.

29. Web Site Maintenance

- A. The Contractor agrees to maintain and support an Internet website linked to the State's administration website for access to the PSS, service selection assistance, problem resolution assistance, billing concerns, configuration assistance, Product descriptions, Product specifications and other aids in accordance with reasonable instructions provided by the Contract Administrator. The Contractor agrees that the PSS on the State's administration website shall contain a single, uniform WSCA price for configurations and items. Failure to comply with this requirements will be grounds for further action to be taken against the Contractor.
- B. The Contractor agrees to maintain and support Participating State and Entity Internet website for access to the specific Participating Entity PSS, as well as all other items listed in Item 29.A. listed above. The website shall have the ability to hold quotes for 45 days, as well as the ability to change the quote.
- C. The Contractor may provide electronic commerce assistance for the electronic submission of Purchase Orders, purchase order tracking and reporting.

30. Equal Opportunity Compliance

The Contractor agrees to abide by federal laws and the laws, regulations, and executive orders of the state in which its primary place of business is located pertaining to equal employment opportunity. In accordance with such laws, regulations, and executive orders, the Contractor agrees that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by the contractor under this Agreement. If the Contractor is found to be not in compliance with these requirements during the life of this Agreement, the Contractor agrees to take appropriate steps to correct these deficiencies.

The Contractor certifies that it will remain in compliance with Minn. Stat. § 363.073 during the life of the Agreement.

31. Limitation of Liability

Unless prohibited by state law, or otherwise mutually agreed by the Contractor and Participating Entity or Participating State under a Participating Addendum, the Contractor's liability to a Purchasing Entity for any cause whatsoever shall be limited to the purchase price paid to the Contractor for the products and services that are the subject of the Purchasing Entity's claim. The foregoing limitation does not apply to Paragraphs 12 and 24 of this Agreement or to damages resulting from personal injury caused by the Contractor's negligence. In no event shall the Contractor be liable for any indirect, special, punitive, or consequential damages arising out of this Agreement or the use of the Products or Services purchased by the Purchasing Entity hereunder.

32. Governing Law

This Agreement shall be governed and construed in accordance with the laws of the Lead State. The construction and effect of any Participating Addendum or order against this Agreement shall be governed by and construed in accordance with the laws of the Purchasing Entity's state. Venue for any claim, dispute or action concerning the construction and effect of the Agreement shall be in the Lead State. Venue for any claim, dispute or action concerning an order placed against this Agreement or the effect of a Participating Addendum or shall be in the Purchasing Entity's state.

33. Change in Contractor Representatives

Contractor shall appoint a primary representative to work with the Contract Administrator to maintain, support and market this Agreement. The Contractor shall notify the Contract Administrator of changes in any Contractor key personnel, in writing, and in advance, if possible. The State reserves the right to require a change in Contractor's then-current primary representative if the assigned representative is not, in the opinion of the State, adequately serving the needs of the Lead State and the Participating Entities.

34. Release

The Contractor, upon final payment of the amount due under this Agreement, releases the Lead State and Participating Entities, its officers and employees, from all contractual liabilities, claims and obligations whatsoever arising from or under this Agreement, except as expressly provided in Paragraph 41. Survival, below. The Contractor agrees not to purport to bind the Lead State or any Participating Entity to any obligation, unless the Contractor has express written authority to do so, and then only within the strict limits of the authority.

35. Data Practices

- A. The Contractor and the State must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, as it applies to all data provided by the State to the Contractor and all data provided to the State by the Contractor. In addition, the Minnesota Government Data Practices Act applies to all data created, collected, received, stored, used, maintained, or disseminated by the Contractor in accordance with this Agreement that is private, nonpublic, protected nonpublic, or confidential as defined by the Minnesota Government Data Practices Act, Ch. 13.
- B. In the event the Contractor receives a request to release the data referred to in this article, the Contractor must immediately notify the State. The State will give the Contractor instructions concerning the release of the data to the requesting party before the data is released. The civil remedies of Minn. Stat. § 13.08, apply to the release of the data referred to in this article by either the Contractor or the State.
- C. The Contractor agrees to indemnify, save, and hold the State, its agents and employees, harmless from all claims arising out of, resulting from, or in any manner attributable to any violation of any provision of the Minnesota Government Data Practices Act, including legal fees and disbursements paid or incurred to enforce this provision of the Agreement. In the event that the Contractor subcontracts any or all of the work to be performed under the Agreement, the Contractor shall retain responsibility under the terms of this paragraph for such work.
- D. The Contractor agrees to be bound by the data practices requirements as outlined in the Participating Addendum of a Participating State or Participating Entity.

36. Organizational Conflicts of Interest

- A. The Contractor warrants that, to the best of its knowledge and belief, and except as otherwise disclosed, there are no relevant facts or circumstances which could give rise to organizational conflicts of interest. An organizational conflict of interest exists when, because of existing or planned activities or because of relationships with other persons:
 - a Contractor is unable or potentially unable to render impartial assistance or advice to the State;
 - the Contractor's objectivity in performing the work is or might be otherwise impaired; or
 - the Contractor has an unfair competitive advantage.

- B. The Contractor agrees that if an organizational conflict of interest is discovered after award, an immediate and full disclosure in writing shall be made to the Assistant Director of the Department of Administration's Materials Management Division that shall include a description of the action the Contractor has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest is determined to exist, the State may, at its discretion, cancel the Agreement. In the event the Contractor was aware of an organizational conflict of interest prior to the award of the Agreement and did not disclose the conflict to the Contract Administrator, the State may terminate the Agreement for default. The provisions of this clause shall be included in all subcontracts for work to be performed, and the terms "Agreement," "Contractor," and "Contract Administrator" modified appropriately to preserve the State's rights.

37. Replacement Parts

Unless otherwise restricted in a Participating Addendum or maintenance service agreement, replacement parts may be refurbished.

38. FCC Certification

The Contractor agrees that Equipment supplied by the Contractor meets all applicable FCC Certifications. Improper, falsely claimed or expired FCC certifications are grounds for termination of this Agreement for cause.

39. Site Preparation

A Purchasing Entity shall prepare and maintain its site in accordance with written instructions furnished by the Contractor prior to the scheduled delivery date of any Products and Services and shall bear the costs associated with the site preparation.

40. Assignment

The Contractor shall not sell, transfer, assign, or otherwise dispose of this Agreement or any portion hereof or of any right, title, or interest herein without the prior written consent of the State's authorized agent. This Agreement is a manufactured-direct solicitation and Agreement. Assignment to an entity that is not a manufacturer, as defined in this Agreement, is **NOT** within the Scope of this Agreement. Such consent shall not be unreasonably withheld. The Contractor shall give written notice to the State's authorized agent of such a possibility at least 30 days prior to the sale, transfer, assignment, or other disposition of this Agreement. Failure to do so may result in the Contractor being held in default. This consent requirement includes reassignment of this Agreement due to a change in ownership, merger, or acquisition of the Contractor or its subsidiary or affiliated corporations. This section shall not be construed as prohibiting the Contractor's right to assign this Agreement to corporations to provide some of the services hereunder. Notwithstanding the foregoing acknowledgment, the Contractor shall remain solely liable for all performance required and provided under the terms and conditions of this Agreement. The Contractor may assign payments in accordance with specific provisions stated in a Participating Addendum.

41. Survival

Certain paragraphs of this agreement including but not limited to Patent, Copyright, Trademark, and Trade Secret Indemnification; Indemnification; Limitation of Liability; Governing Law; Audits; and Publicity shall survive the expiration of this agreement. Software licenses, warranty and service agreements that were entered into under the terms and conditions of this Agreement shall survive this Agreement.

42. Succession

This Agreement shall be entered into and be binding upon the successors and assigns of the parties.

43. Notification

- A. If one party is required to give notice to the other under the Agreement, such notice shall be in writing and shall be effective upon receipt. Delivery through the US Postal service shall be deemed as delivered three business days after being mailed. Delivery may be by certified United States mail, or by hand, in which case a signed receipt shall be obtained. A facsimile transmission shall constitute sufficient notice, provided the receipt of the transmission is

confirmed by the receiving party. All notices shall be addressed as follows:

To MMD:

Department of Administration
Materials Management Division
Bernadette Kopischke, CPPB
Acquisition Management Specialist
50 Sherburne Avenue
112 State Administration Building
St. Paul, MN 55155
Fax: 651.297.3996
Email: bernie.kopischke@state.mn.us

To Contractor:

Debra Lee
Public Sector Contract Manager
Hewlett Packard Company
2055 SH 249
Houston, TX 77070
Tel: 847.537.0344
Fax: 281.927.5213
Email: Debra.Lee@hp.com

Copy to:
Todd Reed
Public Sector Contract Manager
Hewlett Packard Company
2055 SH 249
Houston, TX 77070
Tel: 281.927.3808
Fax: 281.927.8883
Email: Todd.Reed@hp.com

- B. Either party may change its representative or address above by written notice to the other in accordance with the terms of this Paragraph 44. The carrier for mail delivery and notices shall be the agent of the sender.

44. Reporting and Fees

A. Administration Reporting and Fees

1. The Contractor agrees to provide periodic utilization reports to the Contract Administrator in accordance with the following schedule:

<u>Period End</u>	<u>Report Due</u>
June 30	July 31
September 30	October 30
December 31	January 31
March 31	April 30

2. The periodic report shall include, but not be limited to the net (gross sales minus returns, credits, and deductions) sales for the period subtitled by Purchasing Entity name, within the Purchasing Entity's state name. A standard format of data elements shall be developed for the report. The Contractor shall submit a check payable to Western States Contracting Alliance for an amount equal to one-twentieth of one percent (0.0005) of the net sales for the period.

3. The Contractor agrees to include all Reseller Agent sales in the periodic utilization reports described above. In addition, the Contractor agrees to include in the utilization report a Reseller Agent utilization report of the net sales for the period subtotaled by Purchasing Entity name, within Purchasing Entity state name by Reseller Agent Name.
4. The Contractor agrees to provide with the quarterly utilization report a supplemental report of the credits associated with the units taken back in a format to be mutually agreed to.
5. The utilization reports shall be submitted to the Contract Administrator via electronic mail in a Microsoft Excel spreadsheet format, or other methods such as direct access to Internet or other databases.
6. If requested by the Contract Administrator, the Contractor agrees to provide supporting Purchase Order detail records on a mutually agreed magnetic media in a mutually agreed format. Such requests shall not exceed twelve per year.
7. The failure to file the utilization reports and fees on a timely basis shall constitute grounds for the removal of the Contractor's primary representative, suspension of this Agreement or termination of this Agreement for cause.
8. The Contract Administrator shall be allowed access to all reports from all Purchasing Entities.

B. Participating Entity Reports and Fees

1. Participating Entities may require an additional fee be paid directly to the State on purchases made by Purchasing Entities within that State. For all such requests, the fee level, payment method and schedule for such reports and payments shall be incorporated in a Participating Addendum that is made a part of this Agreement. The Contractor may adjust PSS pricing accordingly for purchases made by Purchasing Entities within the jurisdiction of that State. All such agreements shall have no effect whatsoever on the WSCA fee or the prices paid by the Purchasing Entities outside the jurisdiction of the State requesting the additional fee.
2. The Contractor agrees to provide additional reports to Purchasing Entities upon agreement by both parties as to the content and delivery method of the report. Methods of delivery may include direct access to Internet or other databases.
3. Each State Purchasing Entity shall be allowed access to reports from all entities within that State.

45. Default and Remedies

- A. Any of the following shall constitute cause to declare this Agreement or any order under this Agreement in default:
 1. Consistent nonperformance of contractual requirements; or
 2. A material breach of any term or condition of this Agreement.
- B. A written notice of default, and an opportunity to cure within 30-days notification of the written notice, shall be issued by the party claiming default, whether the Lead State (in the case of breach of the entire Agreement), a Participating Entity (in the case of a breach of the participating addendum), the Purchasing Entity (with respect to any order), or the Contractor. Time allowed for cure shall not diminish or eliminate any liability for liquidated or other damages.
- C. If the default remains after the opportunity for cure, the non-defaulting party may:
 1. Exercise any remedy provided by law or equity;

2. Terminate the Agreement, a Participating Addendum, or any portion thereof, including any Purchase Orders issued against the Agreement;
3. Impose liquidated damages as mutually agreed by the parties, as specified in an Amendment to a Participating Addendum;
4. In the case of default by the Contractor, and to the extent permitted by the law of the Participating State or Purchasing Entity, suspend Contractor from receiving future solicitations from within the Participating Entity's jurisdiction.

46. Audits

- A. The Contractor agrees to assist the Contract Administrator or designee with web site Product and pricing audits based on mutually acceptable procedures.
 1. The product audit will closely monitor the products and services listed on the website to insure they comply with the approved products and services. The addition of products or services not approved by the Contract Administrator will not be tolerated and may be considered a material breach of this Agreement.
- B. Upon request, the Contractor agrees to assist Participating Entities with invoice audits to ensure that the Contractor is complying with this Agreement in accordance with mutually agreed procedures set forth in the Participating Addendum.

47. Extensions

If specifically authorized by provision in a Participating Addendum, the Contractor may, at the sole discretion of the Contractor and in compliance with the laws of the Participating State, offer Products and services to non-profit organizations, private schools, Native American governmental entities, government employees and students within the governmental jurisdiction of the entity completing the Participating Addendum with the understanding that the State has no liability whatsoever concerning payment for products or services.

48. Sovereign Immunity

The State does not waive its sovereign immunity by entering into this Agreement and fully retains all immunities and defenses provided by law with regard to any action based on this Agreement.

49. Ownership

- A. **Ownership of Documents/Copyright.** Any reports, studies, photographs, negatives, databases, computer programs, or other documents, whether in tangible or electronic forms, prepared by the Contractor in the performance of its obligations under the Agreement and paid for by the State shall be the exclusive property of the State and all such material shall be remitted to the State by the Contractor upon completion, termination or cancellation of the Agreement. The Contractor shall not use, willingly allow or cause to allow such material to be used for any purpose other than performance of the Contractor's obligations under the Agreement without the prior written consent of the State.
- B. **Rights, Title and Interest.** All rights, title, and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trade marks, and service marks in the said documents that the Contractor conceives or originates, either individually or jointly with others, which arise out of the performance of the Agreement and are ordered as a work product, will be the property of the State and are, by the Agreement, assigned to the State along with ownership of any and all copyrights in the copyrightable material. The Contractor also agrees, upon the request of the State, to execute all papers and perform all other acts necessary to assist the State to obtain and register copyrights on such materials. Where applicable, works of authorship created by the Contractor for the State in performance of the Agreement shall be considered "works for hire" as defined in the U.S. Copyright Act. Nothing in this Agreement shall be construed as transferring any right, title, or interest in any of the Contractor's or their third party's confidential information, trademarks, copyrights, intellectual property or other proprietary interest.

50. **Prohibition Against Gratuities**
- A. The State may, by written notice to the Contractor, terminate the right of the Contractor to proceed under this Agreement if it is found by the State that gratuities in the form of entertainment, gifts, or otherwise were offered or given by the Contractor or any employee, agent, or representative of the Contractor to any officer or employee of the State with a view toward securing this Agreement, or securing favorable treatment with respect to the award or amendment of this Agreement, or the making of any determinations with respect to the performance of this Agreement.
 - B. The Contractor certifies that no elected or appointed official or employee of the State has benefitted or will benefit financially or materially from this Agreement. This Agreement may be terminated by the State if it is determined that gratuities of any kind were either offered to or received by any of the aforementioned individuals from the Contractor, its agent, or its employees.
51. **Antitrust**
- The Contractor hereby assigns to the State any and all claims for overcharges as to goods and/or services provided in connection with this Agreement resulting from antitrust violations which arise under antitrust laws of the United States and the antitrust laws of the State.
52. **Right to Publish**
- A. Any publicity given to the program, publications or services provided resulting from the Agreement, including but not limited to notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Contractor, or its employees individually or jointly with others, or any subcontractors or resellers shall identify the State as the sponsoring agency and shall not be released, unless such release is a specific part of an approved work plan included in the Agreement prior to its approval by the Contract Administrator.
 - B. The Contractor shall not make any representations of the State's opinion or position as to the quality or effectiveness of the products and/or services that are the subject of this Agreement without the prior written consent of the Agreement Administrator. Representations include any publicity, including but not limited to advertisements, notices, press releases, reports, signs, and similar public notices.
53. **Performance While Dispute is Pending**
- Notwithstanding the existence of a dispute, the parties shall continue without delay to carry out all of their responsibilities under this Agreement that are not affected by the dispute. If a party fails to continue without delay to perform its responsibilities under this Agreement, in the accomplishment of all undisputed work, any additional cost incurred by the other parties as a result of such failure to proceed shall be borne by the responsible party.
54. **Hazardous Substances**
- To the extent that the goods to be supplied to the Purchasing Entity by the Contractor contain or may create hazardous substances, harmful physical agents or infectious agents as set forth in applicable State and federal laws and regulations, the Contractor must provide the Purchasing Entity with Material Safety Data Sheets regarding those substances (including mercury). A copy must be included with each delivery.
55. **Customer Satisfaction/Complaint Resolution**
- A. The Contractor's process for resolving complaints concerning products, support, and billing problems is attached as **Exhibit B**.
 - B. The Contractor will submit a format for a survey for approval by the Contract Administrator. The Contractor will survey its customers in each Participating State two (2) months prior to the annual meeting with the Contract Administrator.

56. Value Added Services

The Contractor is expected to provide such services as installation, training, and software imaging upon request of the Purchasing Entity. Additional Value Added Services offered by the Contractor are attached as **Exhibit C**, including relative costs associated with those services.

57. E-Rate Program

The Contractor's E-Rate identification number is 143007617.

E-Rate qualifying products are as follows:

HP ProLiant servers for use as DHCP servers, Domain name servers, E-mail servers, Terminal servers, and Web servers (for external users).

HP ProCurve network electronics: Routers, Switches, Hubs, and Wireless networking products.

HP Services: Installation services for eligible products, Maintenance services for eligible products, Infrastructure design and project support for E-rate eligible projects.

Other enterprise offerings: Rapid Deployment Pack for assistance in server installation, UPS when used in conjunction with eligible servers, NICs when used in conjunction with eligible servers, Factory Express configuration of eligible servers, Insight Manager 7 SP2/NIMBUS training for personnel tasked with server installation and maintenance

The Contractor shall make every effort to continue its involvement in this program and to add products as applicable.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of execution by the State of Minnesota, Commissioner of Administration, below.

1. HEWLETT PACKARD COMPANY

The Contractor certifies that the appropriate person(s) have executed this Agreement on behalf of the Contractor as required by applicable articles, bylaws, resolutions, or ordinances.

By: [Signature]

Title: Contracts Mgr

Date: July 8th 2004

By: _____

Title: _____

Date: _____

2. MATERIALS MANAGEMENT DIVISION

In accordance with Minn. Stat. § 16C.03, Subd. 3.

By: Bernadette Kopischke

Title: Acquisition Management Specialist

Date: 7/9/07

3. COMMISSIONER OF ADMINISTRATION

Or delegated representative

By: [Signature]

Date: 9 July 04

EXHIBIT A - ADDITIONAL WARRANTIES

HP Global Limited Warranty Statement for NonStop Products can be found on the Contractor's website at: <http://H71033.www7.hp.com/page/WARRANTY.html>. This warranty is for Unix products. CarePags, installation and implementation services, maintenance, support, extended or uplifted warranty is based on HP's standard Support terms and conditions.

All other product standard warranty can be found on the Contractor's website at: <http://h20000.www2.hp.com/bizsupport/TechSupport/ProductRoot.jsp?>

The following warranties also apply.

A. WARRANTY

- a) Product warranty period and additional information is available with Products, on quotations, or upon request.
- b) Products purchased from HP will receive the standard warranty in the country of purchase. If Customer moves such Products to another country where HP has Support presence, then Customer will receive the destination country standard warranty.
- c) Customer may receive a different warranty when the Product is purchased as part of a system. HP reserves the right to change the warranty. Such changes will affect only new orders.
- d) The warranty period begins on the date of Delivery, or the date of installation if installed by HP. If Customer schedules or delays installation by HP more than thirty (30) days after Delivery, the warranty period begins on the 31st day after Delivery.
- e) If Customer transfers a Product to another user, warranty service is available to that user for the remainder of the warranty period.
- f) HP warrants HP hardware Products against defects in materials and workmanship. HP further warrants that HP hardware Products conform to Specifications.
- g) HP warrants that Software will not fail to execute its programming instructions due to defects in materials and workmanship when properly installed and used on the Device designated by HP. HP further warrants that HP owned standard Software will substantially conform to Specifications. HP does not warrant that Software will operate in hardware and software combinations selected by Customer, or meet requirements specified by Customer.
- h) HP does not warrant that the operation of Products will be uninterrupted or error free.
- i) If HP receives notice of defects or non-conformance to hardware Specifications, or substantial non-conformance to HP owned standard Software Specifications during the warranty period, HP will, at its option, repair or replace the affected Products. If HP is unable, within a reasonable time, to repair, replace or correct a defect or non-conformance in a Product to a condition as warranted, Customer will be entitled to a refund of the purchase price upon prompt return of the Product to HP. Customer will pay expenses for return of such Products to HP. HP will pay expenses for shipment of repaired or replacement Products.
- j) HP warrants that HP Support will be provided in a professional and workmanlike manner.
- k) Some newly manufactured HP Products may contain and HP Support may use remanufactured parts which are equivalent to new in performance.
- l) The warranties provided herein will apply only to those Products and Support which are branded by HP with an HP trademark ("HP Branded"). HP does not warrant any third party Products or Support even if included with other HP Branded Products or Support. Furthermore, HP provides all such third party Products and Support AS IS. However, the original manufacturers of suppliers may provide their own warranties as specified in the documentation accompanying such third party Products and Support.
- m) The above warranties do not apply to defects resulting from:
 - 1) improper or inadequate maintenance by Customer;
 - 2) Customer or third party supplied software, interfacing or supplies;
 - 3) unauthorized modification;
 - 4) improper use or operation outside of the Specifications for the Product;
 - 5) abuse, negligence, accident, loss or damage in transit;
 - 6) improper site preparation; or
 - 7) unauthorized maintenance or repair.

- n) THE ABOVE WARRANTIES ARE EXCLUSIVE AND NO OTHER WARRANTY, WHETHER WRITTEN OR ORAL, IS EXPRESSED OR IMPLIED. TO THE EXTENT PERMITTED BY LAW, HP SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NONINFRINGEMENT.

B. Support services and Uplift and Extended Warranty

1. DEFINITIONS AND SERVICES INCLUDED

- a) "HP System Support Upfront Services", "HP System Support Options", "HP Care Pack", or simply "HP Upfront Services" refers to HP's offerings for hardware, software, network, SAN (Storage Area Network), and Mission Critical support. HP Upfront Services are available for purchase by the PURCHASER either at the time of Product purchase, or prior to installation of such Products for which HP Upfront Services are being purchased.
- b) "HP System Support Services", "Compaq Services" or simply "HP System Support" refers to HP's offerings for hardware, software, network, SAN (Storage Area Network), and Mission Critical support. HP System Support is available on a contractual basis either for a fixed period or on an open-ended ("evergreen") basis (note that these are not part of HP's Upfront Services offering, as defined above.) HP System Support Services are also referred to as "contractual support".
- c) Certain features of HP Upfront Services and HP System Support Services are optional and may be purchased upon request by PURCHASER. Standard and optional features for HP System Support Upfront Services and HP System Support Service, covering HP and specified non-HP systems, are described in the applicable Technical Data sheet and/or Service Description and will be provided pursuant to the specifications set out therein. Such Technical Data sheets and/or Service Descriptions become an integral part of this Exhibit.
- d) "Support Services" will mean the collective service offering described in 1. a) and 1. b) above.

2. PREREQUISITES

HP, in its reasonable opinion, will make a determination regarding whether PURCHASER adequately meets the prerequisites for Support Services as outlined in this Exhibit.

- a) Uniform Coverage. Unless otherwise agreed by HP, all hardware and software products that constitute the minimum system configuration (a collection of hardware and software that is designated to operate as a functional unit), along with all other such hardware and software products that may be included or attached to such system configuration, must be covered at the same Support Services coverage level. Similarly, the duration period must be the same for all hardware and software products in a particular system for which Support Services is purchased. (i.e., must be coterminal).
- b) Connectors and Cables. All products covered under Support Services must be interconnected by cables or connectors listed in the appropriate manufacturer's documentation as compatible with the system. For products that do not meet this requirement, service is available at the applicable standard service rates for such products.
- c) Software Support. All HP systems for which execution of diagnostic tests is software-dependent must, at a minimum, be covered by Support Services that provide periodic software updates.
- d) Right to Copy Documentation. PURCHASER may copy documentation updates for use with other systems covered by the Support Service that provides software support.
- e) Software Licenses. PURCHASER can purchase Support Services only for HP software for which PURCHASER has rightfully acquired an appropriate HP software license (pursuant to licensing terms outlined above).
- f) Designated Callers and Training Requirements. All Response Center callers must be generally knowledgeable and trained in system administration, system management, and if applicable, network administration/network management in order to be an authorized caller. HP has the right to review and discuss an authorized caller's prior training and/or experience to determine initial eligibility. In addition, if issues should arise during Response Center interaction that, in HP's reasonable opinion, may be a result of such caller's lack of general experience and/or training, HP reserves the right to request replacement of such caller. Access to HP's Response Center is limited to: PURCHASER system manager(s) for the operating system and subsystem software, if applicable, the network operator for the network, and for Support Services that include SAN coverage; after normal business hours authorized caller; including storage network operator and alternate; if applicable, application software manager and alternate; and if applicable, additional HP Response Center callers, which may be subject

to an additional charge. In the absence of any of these managers, the HP Response Center is available for their designated alternates. In the event of a change to the designated caller(s), PURCHASER will inform HP of such replacement within a reasonable time. All Response Center callers must have the proper system identifier, such as the system handle or system serial number, when initiating a call to the Response Center.

- g) Remote Support. For HP to provide remote support, PURCHASER must give authorization and provide access to a remote support connection, either internet based or qualified modem, as well as access to one voice-grade telephone line and one data-quality telephone line or network with terminations, or equivalent, near the system. For storage devices using Continuous Track or Instant Support Enterprise Edition, a data quality phone line must be provided for "phone-home" diagnostic technology capability. For some service levels, PURCHASER must allow HP to install and provide HP adequate space for and access to HP-provided equipment, as well as provide connectivity as specified in the applicable Technical Data sheet and/or Service Description for the Support Service.
 - h) HP IT Resource Center. HP IT Resource Center is available via the worldwide web for certain Support Services. With a Web browser, PURCHASER can access the specified areas of the HP IT Resource Center. FTP access is required for some electronic services. Designated callers who submit HP Response Center calls via the HP IT Resource Center must meet the same training requirements set forth in 2. f) above. Use of HP support tools available via the HP IT Resource Center requires agreement to the HP Support Tool License Terms.
 - i) Country Boundaries. All systems supported by one PURCHASER system manager must be located within the same country.
 - j) Eligibility. To be eligible for certain coverage levels and Support Services offerings, PURCHASER may be required to meet a minimum monthly billing amount specified by HP.
 - k) Central Order Group (selected products ONLY). This provision only applies to PURCHASERS who have purchased certain Support Services in regards to the designation of the Central Order Group by HP. The Central Order Group is defined as the particular system within a grouping of systems in a PURCHASER's environment that has the fastest processor speed and largest number of users. The Central Order Group must have only one PURCHASER system manager. Unless otherwise agreed, HP will designate which system constitutes the Central Order Group based upon the criteria defined above. Except for certain designated mission critical environments, both the Central Order Group and add-on order groups (connected systems) must be of the same HP or non-HP product family and must collectively have the same PURCHASER system manager.
3. SERVICE LIMITATIONS
- a) Hardware, Software, SAN and Network Support. Any services involving hardware, software or network-related problems not covered by Support Services, will be subject to the applicable standard services rates for such products.
 - b) Maximum Use Limitations. For those products that have a maximum usage limit, such as a specified page limit, as set forth in the applicable Operating Manual, Technical Data Sheet, or Service Description, any such Products operated in excess of their maximum usage rate are not eligible for Support Services, but can be serviced at the applicable standard service rates for such products.
 - c) Interfaces and Accessories. HP may cover cables, connectors, accessories and interfaces under the same hardware service level purchased for the products with which they are used.
 - d) Supported Software Versions. Unless otherwise agreed by HP, HP provides HP Support Services only for the current and immediately preceding versions of HP software, and only when the software is used with hardware that is included in HP-specified configurations. A version is defined as a release of a software product that contains new features, enhancements, and maintenance updates. If support coverage lapses, additional fees may be required to resume support coverage. HP will support specified versions of selected non-HP software, but will not support the software any longer than the vendor supports it. For non-HP software, HP provides Support Services only for software versions that are documented as supported on specified configurations. HP will be under no obligation to provide Support Services should it be required due to alterations or modifications to code.
 - e) Non-HP Software. For non-HP Software, Support Services are limited, unless otherwise specified by HP, to telephone assistance, and if available to HP from the third-party software vendor or other appropriate provider, patches, workarounds, and updates.
 - f) HP Software on Non-HP Systems. Support Services for certain HP software products used with designated non-HP systems is limited to the support deliverables specified in the applicable Technical

Data Sheet and/or Service Description. PURCHASERS must maintain HP-supported non-HP software at a code revision level specified by HP.

- g) Network Software Coverage without Network Support. Support for HP network software that provides multivendor node connectivity is limited to product-usage and problem-solving assistance and software update materials, unless network support is purchased.
- h) Travel Zones. PURCHASER sites located beyond one hundred (100) miles (160 kilometers), with the exception of HP's mission critical Support Services offering, in which case for those sites located beyond fifty (50) miles, of a primary HP support office may be subject to travel charges, longer response times, reduced restoration or repair commitments, and reduced coverage hours.
- i) Availability. Some Support Services features and coverage levels are subject to local availability.
- j) Consumables, User Replaceable Parts, Maintenance Kits, and other Supplies. Support Services do not include the provision, return/replacement, or installation of supplies or other consumable items including but not limited to, accessories, operating supplies, magnetic media, print heads, ribbons, toner, and batteries.
- k) Out of Coverage Hours. PURCHASER requests for Support Services, or for HP installation and configuration services, that are scheduled after HP's locally defined, standard business hours may be subject to HP standard after hours service rates (unless PURCHASER has specifically purchased the applicable after hours coverage for such Support Service).

4. PURCHASER RESPONSIBILITIES

- a) Product List. PURCHASER will be responsible for the overall listing of hardware and software products under Support Services, including the accuracy of such listing, the location of the products, serial numbers, the HP-designated system handle(s), and their associated coverage levels, including any subsequent changes to such listing, as required, throughout the applicable Support Services coverage period.
- b) Access. PURCHASER must provide HP with the following:
 - 1) Access to the products covered under HP Upfront Services and HP System Support.
 - 2) Adequate working space and facilities within a reasonable distance of the products.
 - 3) Access to and use of all information, internal resources, and facilities determined necessary by HP to service the products.
 - 4) For the scheduled support level, PURCHASER must designate a single work area acceptable to HP at PURCHASER site. This area must include shelves or racks for incoming and outgoing products, adequate open bench workspace, adequate power and lighting, and access to a telephone. Before having a product serviced under the scheduled support level, PURCHASER must:
 - a) Maintain a written log of model number, serial number, and current failure symptoms and be prepared to provide this information to HP upon request.
 - b) Locate all failed units to be repaired during a scheduled visit at the designated work area before the HP PURCHASER Engineer arrives.
 - c) Call HP the workday before the day of the scheduled visit to provide information regarding the number and type of products requiring repair.
- c) Operating Procedures. PURCHASER must follow routine operating procedures as specified in the manufacturer's product operation manual(s).
- d) Diagnostic/Maintenance Software (selected products). HP will require the use of certain system and network diagnostic and maintenance programs (herein after referred to as "Proprietary Service Tools") for delivery of Support Services under certain coverage levels. These Proprietary Service Tools which remain the sole and exclusive property of HP, are provided "as is," and include, but are not limited to, remote fault management software, High Availability Observatory ("HAO"), Insight Manager, Instant Support ("IS"), and Instant Support Enterprise Edition ("ISEE"). Such tools may reside on the PURCHASER's system(s) or site(s), and PURCHASER may only use such tools for the purposes covered by HP's permission, and only during the term of the applicable Support Service coverage period. PURCHASER may not sell, transfer, assign, pledge, or in any way encumber or convey these Proprietary Service Tools. PURCHASER will also be required to:
 - 1. allow HP to keep such Proprietary Tools resident on PURCHASER's system(s) or site(s), and assist HP in running these Proprietary Service Tools,
 - 2. install, maintain, and support such Proprietary Service Tools, including any required updates and patches,

3. use the electronic data transfer capability to inform HP of events identified by the software, and
4. if required, purchase HP-specified modem and/or data sets for systems having remote diagnosis service. Upon termination of Support Services, PURCHASER will return the Proprietary Service Tools and/or allow HP to remove these Proprietary Service Tools.
- e) Revision Levels. PURCHASER must maintain all associated system hardware and firmware at the latest HP-specified configuration and code revision level.
- f) Telecommunication Charges. PURCHASER is responsible for all telecommunication charges associated with using HP IT Resource Center and with installing and maintaining ISDN links and Internet connection, or HP-approved alternatives, to the HP Response Center, including as they relate to the HAO, or other Proprietary Service Tools.
- g) Temporary Procedures. PURCHASER is responsible for implementing temporary procedures or workarounds while permanent solutions are being sought.

5. SOFTWARE LICENSE AND COPYRIGHTS

- a) Updates. Software updates or revisions furnished in connection with Support Services are subject to the license terms in effect for such Software on the date HP ships the update to the PURCHASER. Any standard commercial software product furnished under such Support Services is subject to the standard commercial Software license terms applicable to the product.
- b) HP Update Ownership. PURCHASER acknowledges that it does not own and has no right to, title to, or interest in the updates except as set forth in the applicable HP Software License Terms.
- c) Copyright and Trademark Notices. PURCHASER agrees to reproduce and conspicuously affix copyright and trademark notices from the original software or documentation on each copy of an update that PURCHASER makes or obtains from an electronic data source.

6. MULTIVENDOR NETWORK COVERAGE

- a) Affiliates. HP has developed working relationships with select vendors, known as Affiliates, who assist in the delivery of multivendor support. For purposes of HP's appointment as a Special Agent during multivendor coverage, non-Affiliate refers to other vendors of products in PURCHASER's network.
- b) Performance of Affiliates and Non-Affiliates. HP is not liable for performance or non-performance of Affiliates and non-Affiliates, their products, or their support services.
- c) Operational Network. HP must verify PURCHASER's network as fully operational before Support Services, including LAN/WAN network, and Storage Network Environmental support coverage begins. This prerequisite is deemed met if Support Services coverage commences upon completion of HP's network configuration or assessment services. Otherwise, HP performs verification at the applicable standard service rates for such products.
- d) Supported Connections. HP must agree upon all network connections and products covered under Support Services with network coverage.
- e) Service Requests. Prior to or after placing a service request with HP, PURCHASER will run HP or non-HP product or network diagnostic self-test programs, as appropriate. PURCHASER must then contact the appropriate product vendor if a specific product is found to be at fault. Upon request from HP during a service call, PURCHASER will enable the connection to HP via the network support tool if applicable.
- f) Network Information. PURCHASERS without the HP network support tool installed must identify current product version numbers and system configuration information for all products on the network. PURCHASER must notify HP when major topology changes occur on the network.
- g) Non-HP Service Contracts. To take advantage of Support Services benefits, PURCHASER must purchase service contracts from Affiliates and non-Affiliates that maintain appropriate support service levels for non-HP products.

7. MULTIVENDOR NETWORK/WARRANTY MAINTENANCE MANAGEMENT

Should PURCHASER purchase Support Services that include multivendor network coverage and/or warranty maintenance management services that require HP to act as a special agent, additional terms and conditions will apply. PURCHASER and HP will negotiate in good faith such mutually agreeable additional terms. HP will be under no obligation to act as PURCHASER's special agent until such time as these additional terms are agreed upon and executed between the parties.

8. MISCELLANEOUS

- a) **SubHPs.** Notwithstanding anything to the contrary in the terms of the contract, HP reserves the right and PURCHASER consents to HP's use of subHPs to assist in the provision of Support Services as HP deems appropriate, without notice to PURCHASER.
- b) **Replacement Parts.** Replacement parts provided under Support Services may include new parts, equivalent to new parts, parts that are functionally equivalent or superior to the replaced part, or whole unit replacements. Replaced parts become the property of HP, unless otherwise agreed, and provided that PURCHASER pays the applicable charge(s) associated for retaining such replaced part(s).
- c) **Attachments.** For certain Support Services, PURCHASER may be required to execute additional Attachments to this Exhibit.
- d) **Order of Precedence.** The order of precedence will be as follows: The contract terms and conditions, this Exhibit, the Technical Data Sheet(s), and the Service Description(s).
- e) **HP Product Warranty Upgrade for ninety (90) day on-site warranty or one (1) year "Return to HP" converted to ninety (90) Day on-site warranty.** If PURCHASER purchases HP Upfront System Support Services or HP System Support Options for a HP hardware product that carries either a ninety (90) day on-site or a one (1) year return-to-HP warranty converted to ninety (90) day on-site warranty, and the associated Upfront System Support Services or System Support Option service level purchased by PURCHASER does not provide a better service level than the base ninety (90) day warranty, the service level associated with the base warranty will apply for such ninety (90) days. Thereafter, the service level and response time will revert to those defined by the Upfront System Support Services or HP System Support Option purchased by the PURCHASER. A one (1) year return-to-HP warranty must be converted to a ninety (90) day on-site warranty to qualify. Additionally, days of coverage and on-site response times can be upgraded for an additional charge during the warranty period for most hardware products.
- f) **Warranty Status of Non-HP Products.** Irrespective of a particular non-HP product's warranty status, such Non-HP product(s) under Support Services will be serviced in accordance with this Exhibit, and any applicable Attachments.
- g) **Cancellation.** In the event any prepaid Support Services are canceled, PURCHASER will receive a pro-rata refund only for the unused prepaid services, less any applicable early termination fees, if such fees apply as set forth in an executed addendum or attachment to this Exhibit.
- h) **Financing.** If Support Services are financed as part of an HP Financing Agreement, the HP Financing Agreement terms and conditions regarding cancellation will govern.

EXHIBIT B - COMPLAINT RESOLUTION

HP will work with the WSCA states to customize the procedures to the states' specific escalation requirements. HP's formal service escalation procedure is described in detail below.

A. Order and Billing Escalation Procedures

HP's Customer Services Account Teams place a high emphasis on effectively managing our customers' open orders. We have developed internal processes and training efforts to address this important subject. Customer Services ASRs (Account Support Representatives) are trained to effectively manage the variety of open order reports available through HP's order management system. Team Leaders work with their Customer Services Account Teams to ensure all team members are knowledgeable and comfortable with the multiple sourcing options available to them.

Account Support Representatives are required to spend part of each day reviewing and working all open order reports. When the ASRs have completed their first pass through these reports, they are required to inform their supervisor that they have completed their review and then get help with any issues needing expediting. Team Leaders are required to check this process as part of their daily checklist.

Customer Services team members continuously monitor manufacturing issues with customer orders. The Customer Services Account Team works to resolve product issues as soon as possible. If the issue is not completely resolved within 24 hours of e-mail receipt, the team will notify the appropriate HP Direct manager.

Customer Services management and sales staff meet regularly to identify and resolve any order management outstanding issues. Issues are logged, resolutions proposed, and follow-up tracked. The goal of these meetings is to set the HP "team" expectations or vision, review issues keeping us from realizing that vision, and then put plans in place that get us to the level of service and confidence we and our customers demand.

Turnaround for return processing can be impacted by many factors that make it difficult to measure on average. For straightforward items that don't require a return shipment, it may take up to five days for processing. When items are returned in shipment via a call tag, the product needs to be returned within 30 days. The Account Support team is charged with ensuring that all returns processing and related issues are completed within sixty days.

Generally credits are applied directly against the open amount they represent on the order invoice. When credits are issued for invoices that have already been paid, the credit will be applied to another open invoice. If a Purchasing Entity needs to apply credits to specific open invoices, the Account Support Team will work with the Purchasing Entity and a Credit Manager to coordinate these specific designations. The Account Support Team will act as the first point of contact for credit issues.

B. Invoicing

Just as the purchase order information follows the path of the product during fulfillment, this information is also used to process the invoice. Once the order information is electronically entered by either the Purchasing Entity or its Customer Services Account Team, depending on how the purchase order is submitted, this same electronic order information is directed to the invoice, eliminating the potential for manual errors during processing. Immediately prior to invoice processing, the electronic delivery information from the purchase order is provided to the chosen carrier. Once the product is with the carrier, the invoice is processed and sent to the Purchasing Entity. At this time, HP can also send an automated e-mail notification to the Purchasing Entity informing you of the expected delivery date.

Special contract pricing is maintained on a per customer basis within the order fulfillment system. Since invoices are generated from the order management system, which uses the same information provided at the time of the order submittal and includes all of the subsequent processing information, HP fully expects that our invoices will be 100 percent accurate.

Billing for customization services, such as imaging and asset tagging services, may be billed either as part of the configuration price, or as a separate line item on the same invoice. As with other billing disputes for product and product-related services, the Customer Services Account Team is the primary point of contact.

C. Service Escalation Procedures

HP makes provision for two types of escalation. The first type, referred to as call escalation, relates to escalating specific service events for more timely resolution. The second type, referred to as issue resolution, relates to customer satisfaction issues pertaining to the contract. Both types of escalation are described in the paragraphs that follow.

1. Call Escalation

HP's call escalation procedures provide a mechanism for involving successively higher levels of management within its Customer Services organization. These procedures are automated and non-discretionary and ensure the fastest possible resolution. If a service call logged during coverage hours exceeds a predetermined limit for on-site repair time, the call escalation process is automatically activated and management is notified. The Service Delivery Manager and the Service Account Manager review the situation, and additional resources are applied as necessary until the problem is resolved to the customer's satisfaction. Each system and peripheral has its own strategy and procedure, with established parameters for escalation.

If necessary, the escalation process continues through the development of customized action plans and timelines, formal management reviews, and engagement of territory- or corporate-level resources. At the upper levels, there are daily reviews and updates until closure.

D. Issue Resolution

In the event of a customer satisfaction issue, the customer's first point of contact is normally the program manager or the account manager. This individual engages the necessary resources in the local service delivery unit, obtains the support of management in the local customer business district, and keeps the concerned sales organization apprised of the progress of the resolution. Most issues are resolved readily at the local level. If necessary, the situation is elevated to executive management at the territory or U.S. level.

EXHIBIT C - VALUE ADDED SERVICES

Contact the Contractor for more details on these services. Costs are shown on the Contractor's PSS.

A. Customer Services

1. Implementation Planning and Roll-out
2. Asset Management
3. Environmentally Safe Reclamation/Disposal of Used Parts
4. Installation, Setup, and Test
5. On-Site/Off-Site hardware and software support
6. Extended Warranties with enhanced services and response times
7. Service Level Agreement Definition

B. Education and Training

1. Packaged Courses
2. IT Course Development
3. Customer Content Course Development
4. Virtual Classroom

EXHIBIT D - SOFTWARE LICENSE TERMS

1. DEFINITIONS

- a) "License Fee" means the fee or fees designated by HP for Use of Software. Different License Fees may apply to particular Software if more than one Software License is available for that Software.
- b) "Products" means hardware, Software, documentation, accessories, supplies, parts and upgrades that are determined by HP to be available from HP upon receipt of Customer's order.
- c) "Software" means one or more programs capable of operating on a controller, processor or other hardware Product ("Device") and related documentation. Software is either a separate Product, included with another Product ("Bundled Software"), or fixed in a Device and not removable in normal operation ("Firmware").
- d) "Software License" means the Software license grant and general license terms set forth herein. Each Software License has a corresponding License Fee.
- e) "Use" means storing, loading, installing, executing, or displaying Software on a Device.

2. LICENSE GRANT

- a) In return for the License Fee, HP grants Customer a non-exclusive license to Use the object code version of the Software listed in Customer's order in conformance with:
 - 1) the terms set forth herein; and
 - 2) Use restrictions and authorizations for the Software specified by HP in its quotation, invoice or terms that accompany the Software; and
 - 3) HP's third party suppliers' terms that accompany the Software.In the event of a conflict, the third party suppliers' terms that accompany the Software will take precedence over the Use restrictions and authorizations specified by HP and the terms set forth herein, and the Use restrictions and authorizations specified by HP will take precedence over the terms set forth herein.
- b) Unless otherwise specified, in return for the applicable License Fee, HP grants Customer a license to Use one copy of the Software on one Device at any one time.
- c) Unless otherwise specified, all Software Licenses will be perpetual unless terminated or transferred in accordance with Section 3. g).
- d) If Customer is an HP authorized reseller, Customer may sublicense the Software to an end-user for its Use or (if applicable) sublicense the Software to an HP authorized reseller for subsequent distribution to an end-user for its Use. These sublicenses must incorporate the terms of this Software License in a written sublicense agreement, which will be made available to HP upon request. If Customer is not an HP authorized reseller, Customer may not sublicense the Software unless otherwise agreed to by HP in writing.

3. GENERAL LICENSE TERMS

- a) Software is owned and copyrighted by HP or by third party suppliers. Customer's Software License confers no title or ownership and is not a sale of any rights in the Software. Third party suppliers may protect their rights in the Software in the event of any infringement.
- b) Unless otherwise permitted by HP, Customer may only make copies or adaptations of the Software for archival purposes or when copying or adaptation is an essential step in the authorized Use of the Software on a backup Device, provided that copies and adaptations are used in no other manner and provided further that the Use on the backup Device is discontinued when the original or replacement Device becomes operable.
- c) Customer must reproduce all copyright notices in or on the original Software on all permitted copies or adaptations. Customer may not copy the Software onto any public or distributed network.
- d) Bundled Software or Firmware provided to Customer may only be used when operating the associated Device in configurations as sold or subsequently upgraded by HP. Customer may transfer Firmware only upon transfer of the associated Device.
- e) Updates, upgrades or other enhancements are available under HP Support agreements. HP reserves the right to require additional licenses and fees for Use of the Software on upgraded Devices.
- f) Customer will not modify, disassemble or decompile the Software without HP's prior written consent. Where Customer has other rights under statute, Customer will provide HP with reasonably detailed information regarding any intended disassembly or decompilation. Customer will not decrypt the

Software unless necessary for legitimate use of the Software.

- g) Customer's Software License is transferable subject to HP's prior written authorization and payment to HP of any applicable fee(s). Upon transfer of the Software License, Customer will immediately deliver all copies of the Software to the transferee. The transferee must agree in writing to the terms of Customer's Software License. All Software License terms will be binding on involuntary transferees, notice of which is hereby given. Customer's Software License will automatically terminate upon transfer.
- h) HP may terminate Customer's or any transferee's or sublicensee's Software License upon notice for failure to comply with any applicable Software License terms. Immediately upon termination, the Software and all copies of the Software will be destroyed or returned to HP. Copies of the Software that are merged into adaptations, except for individual pieces of data in Customer's or transferee's or sublicensee's database, will be removed and destroyed or returned to HP. With HP's written consent, one copy of the Software may be retained subsequent to termination for archival purposes.
- i) If the software is licensed for use in the performance of a U.S. government prime contract or subcontract, Customer agrees that, consistent with FAR 12.211 and 12.212, commercial computer software, computer software documentation and technical data for commercial items are licensed under vendor's standard commercial license.

4. GENERAL

- a) Customer may not assign any rights or obligations hereunder without prior written consent from HP.
- b) Customer who exports, re-exports or imports HP licensed Products, technology or technical data purchased hereunder, assumes responsibility for complying with applicable laws and regulations and for obtaining required export and import authorizations. HP may suspend performance if Customer is in violation of any applicable laws or regulations.
- c) Disputes arising in connection with this Agreement will be governed by the laws of the country and locality in which HP accepts the order.
- d) If any term or provision herein is determined to be illegal or unenforceable, the validity or enforceability of the remainder of the terms or provisions herein will remain in full force and effect.
- e) Except as specifically provided in Section 2. a) 2), these HP Software License Terms supersede any previous communications, representations or agreements between the parties, whether oral or written, regarding transactions hereunder. Customer's additional or different terms and conditions will not apply. These HP Software License Terms may not be changed except by an amendment signed by an authorized representative of each party.



WSCA/NASPO Contract Administration

112 Administration Building

50 Sherburne Avenue

St. Paul, MN 55155

Fax: 651.297.3996

TTY: MN Relay Service 1.800.627.3529

<http://www.mmd.admin.state.mn.us>

**AMENDMENT NUMBER: ONE (1)
TO CONTRACT NUMBER: A63309**

THIS AMENDMENT is by and between the State of Minnesota, acting through its commissioner of Administration, for the WSCA/NASPO ("Lead State") and Hewlett Packard Company (Contractor).

WHEREAS, the Lead State has a Contract with the Contractor identified as No. A63309, effective September 1, 2004, through August 31, 2007, to provide direct-from-manufacturer personal computer equipment and related devices, software and services; and

WHEREAS, Minn. Stat. § 16C.03, subd. 5, affords the commissioner of Administration, or delegate pursuant to Minn. Stat. § 16C.03, subd. 16, the authority to amend contracts.

NOW, THEREFORE, it is agreed by the parties to amend the Contract as follows:

1. Change the definition of "Peripherals" to read: "Peripherals" include but are not limited to storage, printers (including multifunction network print/fax/scanner devices), scanners (used in conjunction with computing equipment), monitors, keyboards, uninterruptible power supplies (UPS) and accessories. Adaptive/Assistive technology devices are included as well as configurations for education. A third party may manufacture peripherals. The Contractor shall provide the warranty service and maintenance for equipment on a Master Price Agreement as well as a Takeback Program.

This Amendment is effective beginning on September 1, 2004, and shall remain in effect until August 31, 2007, or until the Contract is canceled, whichever occurs first.

Except as herein amended, the provisions of the original Contract between the parties hereto are expressly reaffirmed and remain in full force and effect.

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WSCA/NASPO Contract Administration

112 Administration Building

50 Sherburne Avenue

St. Paul, MN 55155

Fax: 651.297.3996

TTY: MN Relay Service 1.800.627.3529

<http://www.mmd.admin.state.mn.us>

IN WITNESS WHEREOF, the parties have caused this Amendment to be duly executed intending to be bound thereby.

1. CONTRACTOR

HEWLETT PACKARD COMPANY

The Contractor certifies that the appropriate person(s) have executed this document on behalf of the Contractor as required by applicable articles, bylaws, resolutions, or ordinances.

By: [Signature]

Title: Contract Mgr

Date: 9-30-04

2. LEAD STATE

MATERIALS MANAGEMENT DIVISION

In accordance with Minn. Stat. § 16C.03, Subd. 3.

By: Bernadette Kopischke

Title: Acquisition Management Specialist

Date: 10/4/04

By: _____

Title: _____

Date: _____

3. LEAD STATE

COMMISSIONER OF ADMINISTRATION

Or delegated representative.

By: [Signature]

Date: 4 Oct 04



WSCA/NASPO Contract Administration

112 Administration Building

50 Sherburne Avenue

St. Paul, MN 55155

Fax: 651.297.3996

TTY: MN Relay Service 1.800.627.3529

<http://www.mmd.admin.state.mn.us>

AMENDMENT NUMBER: TWO (2)

TO CONTRACT NUMBER: A63309

THIS AMENDMENT is by and between the State of Minnesota, acting through its commissioner of Administration, for the WSCA/NASPO ("Lead State") and Hewlett Packard Company (Contractor).

WHEREAS, the Lead State has a Contract with the Contractor identified as No. A63309, effective September 1, 2004, through August 31, 2007, to provide direct-from-manufacturer personal computer equipment and related devices, software and services; and

WHEREAS, Minn. Stat. § 16C.03, subd. 5, affords the commissioner of Administration, or delegate pursuant to Minn. Stat. § 16C.03, subd. 16, the authority to amend contracts; and

WHEREAS, the terms of the Contract specifically state that: "MMD and the WSCA Directors acknowledge that with the evolution of technology, new, emerging units and configurations will develop. Addition of these new, emerging units to the PSS may be permitted, with the prior approval of the Contract Administrator and the WSCA Directors. The addition of new, emerging units and configurations is at the sole discretion of the Contract Administrator, subject only to review and approval of the WSCA Directors."

NOW, THEREFORE, it is agreed by the parties to amend the Contract as follows:

The printer categories currently included in Band 3, Printers are: High Speed Laser, Medium Speed Laser, Desktop Laser, and Portable (Laptop) Ink.

The following printer categories are hereby added to Band 3, Printers:

- Multi-functional Desktop Laser
- Multi-Functional - Medium Speed Laser
- Multi-Functional - High Speed Laser

This Amendment is effective beginning on May 1, 2005, or upon the date that the final required signatures are obtained, whichever occurs later, and shall remain in effect until August 31, 2007, or until the Contract is canceled, whichever occurs first.

Except as herein amended, the provisions of the original Contract between the parties hereto are expressly reaffirmed and remain in full force and effect.

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IN WITNESS WHEREOF, the parties have caused this Amendment to be duly executed intending to be bound thereby.

1. HEWLETT PACKARD COMPANY

The Contractor certifies that the appropriate person(s) have executed this document on behalf of the Contractor as required by applicable articles, bylaws, resolutions, or ordinances.

By: Patrick M. Long
Title: Contract Manager
Date: 5/02/05

By: [Signature]
Title: HP - pull
Date: [Signature]

2. LEAD STATE

MATERIALS MANAGEMENT DIVISION

In accordance with Minn. Stat. § 16C.03, Subd. 3.

By: Bernadette Kopschke
Title: Acquisition Management Specialist
Date: 5/5/05

3. LEAD STATE

COMMISSIONER OF ADMINISTRATION

Or delegated representative.

By: [Signature]
Date: 5 MAY 05



WSCA/NASPO Contract Administration

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St. Paul, MN 55155

Fax: 651.297.3996

TTY: MN Relay Service 1.800.627.3529

<http://www.mmd.admin.state.mn.us>

**AMENDMENT NUMBER: 3
TO CONTRACT NUMBER: A63309**

THIS AMENDMENT is by and between the State of Minnesota, acting through its commissioner of Administration, for the WSCA/NASPO ("Lead State") and Hewlett Packard Company (Contractor).

WHEREAS, the Lead State has a Contract with the Contractor identified as No. A63309, effective September 1, 2004, through August 31, 2007, to provide direct-from-manufacturer personal computer equipment and related devices, software and services; and

WHEREAS, Minn. Stat. § 16C.03, subd. 5, affords the commissioner of Administration, or delegate pursuant to Minn. Stat. § 16C.03, subd. 16, the authority to amend contracts; and

WHEREAS, the terms of the Contract specifically state that the agreement may be amended upon agreement of both parties.

NOW, THEREFORE, it is agreed by the parties to amend the Contract as follows:

The unit/configuration limit has been increased for the following bands that were part of the original RFP/Contracts:

Band 1 - Servers, to include pricing configurations for mid-range servers between \$50,000 and \$100,000, including file and print servers.

Band 2 - Desktop, to include high-end workstations between \$50,000 and \$100,000.

Band 4 - Auxiliary Storage, including NAS, SAN, CAS, and CNS, to include pricing configurations for mid-range storage solutions between \$50,000 and \$100,000,

This Amendment is effective beginning on January 1, 2006, or upon the date that the final required signatures are obtained, whichever occurs later, and shall remain in effect until August 30, 2007, or until the Contract is canceled, whichever occurs first.

Except as herein amended, the provisions of the original Contract between the parties hereto are expressly reaffirmed and remain in full force and effect.

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WSCA/NASPO Contract Administration

112 Administration Building

50 Sherburne Avenue

St. Paul, MN 55155

Fax: 651.297.3996

TTY: MN Relay Service 1.800.627.3529

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IN WITNESS WHEREOF, the parties have caused this Amendment to be duly executed intending to be bound thereby.

1. HEWLETT PACKARD COMPANY

The Contractor certifies that the appropriate person(s) have executed this document on behalf of the Contractor as required by applicable articles, bylaws, resolutions, or ordinances.

By: Patricia Long
Title: Contract Manager
Date: 1-18-06

2. LEAD STATE

MATERIALS MANAGEMENT DIVISION

In accordance with Minn. Stat. § 16C.03, Subd. 3.

By: Bernadette Kopischke
Title: Acquisition Management Specialist
Date: 1/23/06

By: _____
Title: _____
Date: _____

3. LEAD STATE

COMMISSIONER OF ADMINISTRATION

Or delegated representative.

By: [Signature]
Date: 23 Jan 06

PARTICIPATING ADDENDUM

COMPUTER EQUIPMENT, SOFTWARE, PERIPHERALS AND RELATED SERVICES

MASTER PRICE AGREEMENT

Hewlett Packard Company (“Contractor”)

A63309

State of Washington

1. Scope

The **Washington State Department of Information Services (“DIS”)** is the Participating State under this Participating Addendum (“PA”) and through execution of this PA adopts this Master Price Agreement #A63309 (“Agreement”) as a Master Contract for the state of Washington. The Request for Proposals that resulted in the award of this Agreement was posted on the web site of the Minnesota Department of Administration, with a notice and link posted on the Washington State TechMall and was advertised in the Seattle Daily Journal of Commerce three times: Friday, February 13, 2004; Saturday, February 14, 2004; and Friday, February 20, 2004.

DIS’ jurisdiction for purposes of this Agreement includes any Washington State agency with properly delegated authority to purchase the Products and Services that are the subject of this Agreement, and any local government or political subdivision (including public schools, colleges or universities) of the state of Washington or eligible non-profit organization with the authority to purchase such Products or Services, who have a properly executed Customer Service Agreement (Interlocal) with DIS. This Contract is not for personal use.

2. Changes

Contractor and DIS agree to the following modifications and additions to the language of the Agreement as executed by the Lead State.

2.1. Paragraph 1 (Definitions)

- a) The definition for “Equipment” is modified to exclude any and all Non-HP Branded equipment.
- b) The definition for “Peripherals” is modified to exclude any and all Non-HP Branded equipment and any multifunction network print/fax/scanner devices that print more than 30 pages per minute from being sold under this PA.
- c) The definition for “Products” is modified to exclude General Purpose Software. The only Software that is available for purchase under this Agreement is PC or server operating system software.
- d) The definition for “Services” is modified to exclude pre-implementation design and disaster recovery planning and support services.

- e) The definition for “State Procurement Official” is modified to read as follows: “State Procurement Official” means the Director of the Washington State Department of Information Services.
- f) The definition for “Travel” is deleted as no travel expenses are anticipated under this PA.

2.2. Paragraph 6 (Payment Provisions)

- a) In 6.B. (Payment of Invoice) add the following language for payment by Washington Purchasing Entities:

Payment shall be tendered to the Contractor within thirty (30) days after delivery of all Products on an invoice or thirty (30) days after receipt of the properly prepared invoice, whichever is later. If the Purchasing Entity fails to make timely payment, Contractor may invoice the Purchasing Entity one percent (1%) per month on the amount overdue. The Purchasing Entity shall make a good faith effort to pay within thirty (30) days of the invoice date of a properly prepared invoice. No advance payment shall be made for the Products and Services furnished by Contractor pursuant to this Agreement, except that maintenance can be paid up to one year in advance.

- b) In 6.C. (Payment of Taxes) add the following language:
Purchasing Entity will pay sales and use taxes, if any, imposed on the Products and Services acquired hereunder. Contractor must pay all other taxes including, but not limited to, Washington Business and Occupation Tax, other taxes based on Contractor’s income or gross receipts, or personal property taxes levied or assessed on Contractor’s personal property. Purchasing Entity, as an agency of Washington State government, is exempt from property tax.

Contractor shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this Contract.

All payments accrued on account of payroll taxes, unemployment contributions, any other taxes, insurance, or other expenses for Contractor or Contractor’s staff shall be Contractor’s sole responsibility.

2.3. Paragraph 8 (Termination)

In 8.A. (Termination for Convenience) add the following after the first sentence:

At any time after the first anniversary date of the Agreement, DIS may terminate its PA, in whole or in part, by giving the Contractor thirty (30) days written notice.

2.4. Paragraph 12 (Patent, Copyright, Trademark and Trade Secret Indemnification)

Replace the text of subparagraph A2 with the following: “Use its best efforts to encourage the Office of the Attorney General of Washington to grant Contractor sole control of the defense and all related settlement negotiations; and”

2.5. Paragraph 20 (Records and Audit)

Add the following language for the state of Washington:

Contractor and its Subcontractors shall maintain books, records, documents and other evidence relating to the invoicing of this Contract, for six (6) years after the expiration or termination of this PA. All such records shall be subject at reasonable times and upon prior notice to examination, inspection, copying, or audit by personnel so authorized by the DIS Contract Administrator and/or the Office of the State Auditor and federal

officials so authorized by law, rule, regulation or contract, when applicable, at no additional cost to the State. Contractor shall be responsible for verified cost overcharges discovered as a result of the audit by Contractor or any of its Subcontractors.

2.6. Paragraph 24 (Indemnification)

Modify the language so that "Purchasing Entity(ies)" is included in each place that "Participating Entity(ies)" appears.

2.7. Paragraph 35 (Data Practices)

Add the following language for the state of Washington:

Contractor acknowledges that some of the material and information that may come into its possession or knowledge in connection with this PA or its performance may consist of information that is exempt from disclosure to the public or other unauthorized persons under either chapter 42.17 RCW or other state or federal statutes ("Confidential Information"). Confidential Information includes the following: names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver's license numbers, medical data, law enforcement records, Purchasing Entity source code or object code, or Purchasing Entity or Washington State security information or information identifiable to an individual that relates to any of these types of information. For any other information that a Purchasing Entity wants to include as Confidential Information the Purchasing Entity will: (i) use commercially reasonable efforts to mark the tangible information with the word *Confidential*; and (ii) give the Contractor verbal notice of the Confidentiality of any oral information that is being shared or the presence of incidental Confidential Information. Contractor agrees to hold Confidential Information in the same degree of confidence as it protects its own Confidential Information, but in no event to less than a reasonable degree, and not to make use of Confidential Information for any purpose other than the performance of this PA, to release it only to authorized employees or Subcontractors requiring such information for the purposes of carrying out this Contract, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without Purchasing Entity's express written consent or as provided by law. Contractor agrees to release such information or material only to employees or Subcontractors who have signed a nondisclosure agreement, the terms of which have been previously approved by Purchasing Entity. Contractor agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information.

Immediately upon expiration or termination of this PA or the pertinent transaction with Purchasing Entity, Contractor shall, at Purchasing Entity's option: (i) certify to Purchasing Entity that Contractor has destroyed all Confidential Information; or (ii) return all Confidential Information to Purchasing Entity; or (iii) take whatever other commercially reasonable steps Purchasing Entity requires of Contractor to protect Purchasing Entity's Confidential Information.

Violation of this section by Contractor or its Subcontractors may result in termination of this Contract and demand for return of all Confidential Information, monetary damages, or penalties.

Contractor acknowledges that DIS and Purchasing Entities are subject to chapter 42.17 RCW and that this Contract shall be a public record as defined in chapter 42.17 RCW. Any specific information that is claimed by Contractor to be Proprietary Information, must be clearly identified as such by Contractor. To the extent consistent with chapter 42.17 RCW, DIS and Purchasing Entities shall maintain the confidentiality of all such

information marked Proprietary Information. If a public disclosure request is made to view Contractor's Proprietary Information, DIS or Purchasing Entity will notify Contractor of the request and of the date that such records will be released to the requester unless Contractor obtains a court order from a court of competent jurisdiction enjoining that disclosure. If Contractor fails to obtain the court order enjoining disclosure, DIS or Purchasing Entity will release the requested information on the date specified.

2.8. Paragraph 44 (Reporting and Fees)

Add the following language for state of Washington:

Contractor agrees to provide monthly reports to the Washington Primary Contact. The monthly report shall include the gross Washington sales for the month just ended, excluding sales tax, subtotaled by Purchasing Entity name within Washington and shall include the HP customer number for each Purchasing Entity. The report shall be accompanied with a check payable to the Department of Information Services for an amount equal to one and one-half percent (1.5% or .015) of the gross Washington sales, excluding sales tax, for the month. The monthly report and fee shall be submitted by the last business day of the month following the month in which Contractor invoiced the Purchasing Entity. Monthly reports are required even if no activity occurred.

2.9. Paragraph 46 (Audits)

Add the following language for the state of Washington:

As a part of its Participating State function, DIS will from time to time perform audits of Purchasing Entity invoices to ensure that the invoices and that the Products and Services listed and the prices charged for the Products and Services are accurate and in accordance with the Agreement. DIS will perform these audits by selecting Purchasing Entities from an Activity Report and asking Contractor to send the invoices for those Purchasing Entities for that report period. The DIS request will be in writing, and will list the HP customer numbers for the Purchasing Entities. Such requests will not exceed twelve (12) per year. Contractor shall ensure that DIS receives the requested invoices within thirty (30) days of Contractor's receipt of DIS' request. Contractor will be responsible for any audit exceptions or disallowed costs.

Dis will also conduct periodic spot check audits of the Prices, Products and Services listed on the website that Contractor maintains for state of Washington Purchasing Entities. DIS will communicate any discrepancies to Contractor and Contractor agrees to correct any deficiencies within three (3) Business Days, or as otherwise agreed.

2.10. Paragraph 49 (Ownership)

All references to the "State" in this paragraph shall include the Purchasing Entity submitting the Purchase Order under which the work is conducted or the Services delivered, as applicable.

2.11. Paragraph 52 (Right to Publish)

Add the following language for the state of Washington:

Contractor agrees to submit to DIS, all advertising, sales promotion, and other publicity materials relating to this PA, Agreement or any Product furnished by Contractor wherein DIS' or Purchasing Entity's name is mentioned, language is used, or Internet links are provided from which the connection of DIS' or Purchasing Entity's name with Contractor's Products or Services may, in DIS' or Purchasing Entity's judgment, be inferred or implied. Contractor further agrees not to publish or use such advertising, sales promotion materials, publicity or the like through print, voice, the World Wide Web, and

other communication media in existence or hereinafter developed without the express written consent of DIS or Purchasing Entity *prior* to such use.

2.12. Exhibit C (Value Added Services)

Contractor and DIS agree to delete Section B of Exhibit C for Washington State Purchasing Entities.

3. Primary Contact:

The primary participating entity contact for this PA is as follows:

Scott Smith, Technology Brokering Services Manager

State of Washington
Department of Information Services

If by US Postal Service:

If by Overnight Courier:

PO Box 42445
Olympia, WA 98504

2411 Chandler Court SW
Olympia, WA 98502

Phone: (360) 725-4200
Fax: (360) 753-1673
E-mail: ss@dis.wa.gov

The primary Contractor contact for this PA is as follows:

Todd Reed

Hewlett Packard Company
20555 SH 249 M/S CCM0301-040
Houston TX 77070

Phone: (281) 927-3808 or (281) 796-2150

Fax: (281) 927-9415

E-mail: Todd.Reed@hp.com

4. Servicing Subcontractors:

Only those HP Authorized resellers and service providers attached hereto or as listed on the HP/Washington State website www.hp.com/buy/WSCAII are eligible to support the Price Agreement under HP's Influencer Program (Reseller Agent) or Service Provider Program, as approved by the Participating Entity.

Orders and payments are to be handled by HP directly.

The **Master Price Agreement Number A63309** *must* be shown on all Purchase Orders issued against this Agreement.

This PA and the Agreement together with its exhibits, set forth the entire agreement between the parties with respect to the subject matter hereof and all previous communications, representations, understandings, warranties or agreements, whether oral or written, not contained in this Agreement or PA, or a written amendment hereto, shall not be binding on either party.

Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this PA and the Agreement, together with its exhibits, shall not be added to or incorporated into this PA or the Agreement and its exhibits, by any purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this PA and the Agreement and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms.

IN WITNESS WHEREOF, the parties have executed this PA as of the date of execution by both parties below.

APPROVED

State of Washington
Department of Information Services


Signature


Robert M. Deshaye
Print or Type Name

Assistant Director
Title

12-29-04
Date

APPROVED

Hewlett Packard Company


Signature

Robert Trivett
Print or Type Name

Manager, Public Sector Contracts
Title

December 21, 2004
Date